

THE CASE OF THE EARL of ARGYLE.

OR

An exact and full Account of his Trial, Escape, and Sentence: Wherein are insert the Act of Parliament in-joining the *Test*, the *Confession of Faith*, the old *Act* of the King's Oath to be given at His Coronation: With several other old *Acts*, made for establishing the *Protestant Religion*.

As also several Explications made of the *Test* by the Conformed Clergy: With the Secret Councils *Explanation* thereof.

Together with several Papers of Objections against the *Test*; all framed and emitted by Conformists: With the Bishop of Edinburgh's *Vindication* of the *Test* in answer thereto.

As likewise a Relation of several Matters of fact, for better clearing of the said Case.

Whereunto is added

An APPENDIX, in answer to a late Pamphlet called, *A Vindication of His Majesty's Government, and Judicatures, in Scotland*, ——— *Especially with Relation to the Earl of Argyle's Process.*

In so far as concerns the Earl's Trial,

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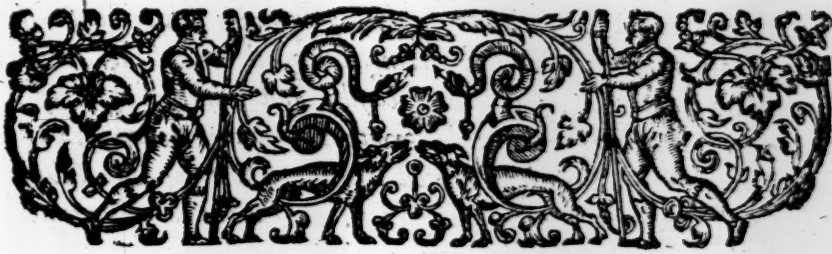
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THE PUBLISHER TO THE READER.



Having received the ensuing Narrative of the Case and Trial of the Earl of Argyle, under the Caution you may find in the close of it, not to hasten the publication, but rather to wait for a more convenient season, It's like I had continued to comply (as I have done hitherto) with the Earl's inclination, if not excited to the contrary by a Paper called, A Vindication of His Majestie's Government, and Judicatories, in Scotland --- Especially with relation to the late Earl of Argyle's Process, printed at Edinburgh, and reprinted at London, with the appearance of a publick allowance: For, albeit all wise and sober men, not only in Scotland, but also in the world, who have heard this affair, do, at this day, sufficiently understand its rise, procedure, issue, and tendency, with all the just consideration, that either oppressed innocence, abused justice, or impotent and ill contrived malice, do deserve; Yet seeing these concerned have had the confidence to subject their Res Judicata to an unexpected review; and withall, the equitie to leave their advantages, and sit themselves on even ground, with an open defiance to all contradictors, and fair submission to the common sense and reason of mankind: I thought, I
could

could not be wanting to such an happy opportunity, without disappointing so generous an offer, deserting my good Friend the Author of the Milt, and failing of the second, and principal part of my Trust: And therefore resolved, without further delay, to give the following sheets their long desired licence: Purposing to subjoyn, as an Appendix, any further animadversions that the above-mentioned Pamphlet may seem to deserve.

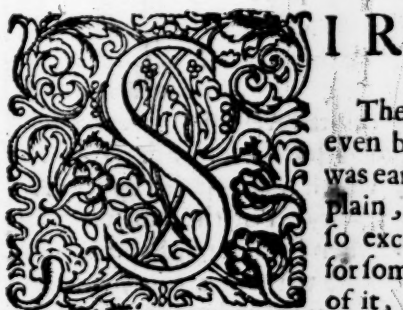
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Edinburgh; 30. May, 1682.



The case of the late *Earl of Argyl*, which, even before the Process led against him, you was earnest to know, was at first, I thought, so plain, that I needed not, and grew afterwards so exceedingly mysterious, that I could not, for some time, give you so perfect an account of it, as I wished: But this time being still no less proper, the exactness of my narrative will, I hope, excuse all delays.

The design against him being now so clear, and the grounds founded on so slender, that to satisfy all unbiassed Persons of his integrity, there needs no more, but barely to represent matter of fact; I should think shame to spend so many words, either on arguments, or relation, were it not lest to strangers some mystery might still be suspected to remain concealed: And therefore to make plain what they can hardly believe, though we clearly see it.

At His Royal Highness's arrival in *Scotland*, the Earl was one of the first to wait upon him, and until the meeting of our last Parliament, the world believed, the Earl was as much in His Highness's favour, as any intrusted in His Majesty's affairs, in this Kingdom.

When it was resolved, and His Majesty moved to call the Parliament, the Earl was in the country, and at the opening of it, he appeared as forward as any in His Majesty's, and His Highness's service, but it had not sat many days when a change was noticed in His Highness, and the Earl observed to decline in His Highness's favour.

In the beginning of the Parliament, the Earl was appointed one of the *Lords of the Articles*, to prepare matters for the Parliament, and named by His Highness to be one of a *Committee of the Articles* for Religion, which, by the custom of all Scots Parliaments, and His Majesty's instructions to his Commissioner, at this time, was the first thing treated of: In this Committee there was an Act prepared for securing the Protestant Religion; which Act did ratify the Act approving the *Confession of Faith*, and also the Act containing the *Coronation Oath*, appointed, by several stand-

ing Acts of Parliament, to be taken by all our Kings, & Regents, before their entrie to the exercise of the Government.

This Act was drawn somewhat less binding upon the Successor, as to his own profession; But full as strictly tying him to maintain the Protestant Religion, in the publick profession thereof, and to put the Laws concerning it in execution, and also appointing a further Test, beside the former, to exclude Papists from places of publick trust: and because the fines of such as should act, without taking the *Test*, appeared no better then discharged, if falling in the hands of a Popish Successor, and *some* accounting any limitation worse then an exclusion, and all being content to put no limitation on the Crown, so it might consist with the safety and security of the Protestant Religion, it was ordained, that all such fines, and forfeitures should appertain the one half to the informers, and the other half should be bestowed on pious uses, according to certain Rules expressed in the Act.

But this Act, being no wise pleasing to *some*, it was laid aside, and the Committee discharged any more to meet, and instead of this Act, there was brought in to the Parliament, at the same time, with the *Act of succession*, a short Act, ratifying all former Acts made for the securitie of the Protestant Religion, which is the first of the printed Acts of this Parliament.

At the passing of this Act the Earl proposed that these words, *And all Acts against Poperie*, might be added, which was opposed by the Advocate, and some of the Clergie, as unnecessary. But the motion being seconded by Sir George Lockhart, and the then President of the Session, now turned out, it was yeelded to, and added without a vote, and this Act being still not thought sufficient, and several Members desiring other additions, and other Acts, a promise was made by His Royal Highness, in open Parliament, that time, and opportunity should be given, to bring in any other Act, which should be thought necessary for further securing the Protestant Religion: But though several persons, both before and after passing the Act for the *Test* (here subjoyned) did give in memorials, and overtures, yet they were never suffered to be read, either in *Articles*, or *Parliament*, but in place of all, this Act for the *Test* was still obtruded, and nothing of that nature suffered to be heard, after once that Act past, though even at passing it the promise was renewed.

As for the *Test*, it was first brought into the Parliament without mentioning the *Confession of Faith*, and, after several hours debate, for adding the *Confession of Faith*, and many other additions, and alterations, it was past at the first presenting, albeit it was earnestly prest, by near half the Parliament, that it might be delayed till next morning, the draught being so much changed and interlined, that many, even of the most engaged in the debate, did not sufficiently understand it, and though they took notes knew not precisely how it stood. And this was indeed the Earls case in particular, and the cause why, in voting, he did forbear either to approve or disapprove.

His part in the debate was, that, in the entrie of it, he said, that he thought, as few Oaths should be required, as could be, and these as short and clear as possible: That it was his humble opinion, that a very small alteration in these Acts, which had been used, these twentie years, might serve, for it was manifest, and he attested the whole Parliament upon it, *That the Oath of allegiance, and Declaration* had effectually debarred all Fanaticks from getting into places of trust, all that time: It was true
some

some Papists had swallowed the Oath of allegiance, and therefore a word or two only of addition, to guard against them, was all he judged necessary.

And there after where in the close of the Act, *The Kings Sons, & Brothers*, were intended to be dispensed with from taking the *Test*. He opposed the exception, & said, it was our happiness that King, & people were of one Religion, and that they were so by Law: That he hoped the Parliament would doe nothing to loose what was fast, nor open a gap for the Royal Family, to differ in Religion, their example was of great consequence, one of them was as a thousand, and would draw the more followers, if once it appeared to the people, that it were honourable, and a priviledge to be of another Religion: And therefor he wished, if any exception vvere, it might be particular for his Royal H^{ty}; but His H^{ty} himselfe opposing this, the Earl concluded vvith his fear, that if this exception did pass it vould doe more hurt to the Protestant Religion then all the rest of that Act, and many other Acts could doe good.

Whilst these Acts, about Religion, were in agitation, his H^{ty} told the Earl one day in privat, to beware of himselfe, for the Earl of *Erroll*, and others were to give in a bill to the Parliament, to get him made liable to some debts they pretended to be cautioners in for his father, and that those that were most forward in His Majesties service must be had a care of: The Earl said He knew there was no ground for any *such bill*, and he hoped neither the Earl of *Erroll*, nor any other should have any advantage of him, upon any head relating to His Majesties service. His Highness told others likewise, he had given the Earl good advice.

But shortly after the above mentioned debates, there were two bills given in to the meeting of the *Articles*, against the Earl, one by the Earl of *Erroll*, the other by His Majesties advocat, who alledged he did it by command, for otherwise he acknowledged it was without his line. The Earl of *Erroll's* clame was, that the Earl of *Argyll* might be declared liable to releve him, and others, of a debt, wherein, they alieadged, they stood bound as cautioners, for the late Marques of *Argyll*, the Earl's Father. To which the Earl answered, that he had not got his Fathers whole estate, but only a part of it, and that expressly burdened with all the debts he was liable to pay, whereof this pretended debt was none, and that the Marques of *Huntlie*, who at that time was owing to the Marques of *Argyll* 5000 l. sterl. had got 4000 l. sterl. of yearly rent, out of the Marques of *Argyll's* forfaulture, without the burden of any debt; so that both by Law, and equity, the Earl could not be liable, the Marques of *Huntlie*, and not he, having got that which should bear *this releefe*, and which should indeed have payed the far greatest part of the Marques of *Argyll's* debt, the same having been undertaken for *Huntlie* by *Argyll*, either as cautioner for *Huntlie*, or to raise money to pay his debt; Besides that the Earl of *Erroll* can never make it appear, that he, or his predecessors were bound, for the Marques of *Argyll* in the third part of the summes he acclames: Yet some were much inclined to beleive *Erroll* on his bare assertion.

His Majestie's Advocat's clame was, to take from the Earl *his heritable offices of Sheriffe &c.* especially that of *justice General* of *Argyll*-Shire, the Isles, and other places, which last is nevertheless only a part of the generall Justitiarie of all *Scotland*,

granted to his Predecessors, some hundred of years agoe, for honourable, and onerous causes, and constantly enjoyed by them until expressly surrendered, in his late Majesties hands, for a new grant of the above mentioned *Iustitiary of Argyl &c*: And this *new grant* was also confirmed by many Acts of Parliament, and particularly by his Majesties Royall Father, of blissed memorie, in the Parliament holden by him Anno 1633. as likewise by his Majestie that now is (whom God long preserve) his *new Gift and Chartour*, after several Debates before him in Anno 1663. and 1672. which *new Gifts and Chartours* were again ratified by a special instruction from His Majestie in the Parliament 1672. So that albeit several *late Gifts of Regalitie* granted to the Marqueis of Athol, Marqueis of Queensberrie, and others, may be questioned, because granted since the Acts of Parliament discharging all *such Gifts* in time coming, yet the Earl of Argyl's rights are good, as being both of a far different nature, and granted long before the said Acts of Parliament, and in effect the Earl his rights are rather confirmed by these prohibitive Acts, because both anterior to, and excepted from them, as appears by the Act *Salvo Jure* 1633. wherein the Earls rights are particularly and fully excepted in the body of the printed Act.

When these things appeared so plain as not to be answered, It was alledged that upon the forfeiture of the late Marqueis of Argyl, his Estate was *annexed* to the Croun, and so could not be gifted to the Earl by His Majestie, (wherein they soon discovered a design to forfeit him, if any pretence could be found) But the *Act of Forfeiture* being read, and containing no such thing, but on the contrary a clear power left to His Majestie to dispose of the whole, and the Earl telling them plainly, that these that were most active to have his Father forfeited, were very far from desiring his Estate to be *annexed* to the Croun, seeing it was in expectation of *Gifts* out of it they were so diligent, that pretence of the *annexation* was past from, but yet the designe was nowise given over, for there was a proposition made, and a vote carried in the *Articles*, that a *Committee* should be appointed, with Parliamentary power, to meet in the intervals of Parliament, to determine all controversies could be moved against any of the Earls rights; Which was a very extraordinary device, and plainly carried by extraordinary influences.

Upon this the Earl applied to the Parliament, where this vote was to be brought, and having informed the members of his right, and the consequences of such a new Judicature, he had good hope to get the vote reversed, when his Royal H^{on} second thoughts judged it fit to put a stop to it, and excused himselfe, saying, it was his not being acquainted, and but lately in affairs, had made him go along with it, for he found it did plainly impugn His Majesties prerogative, and might be of ill consequence, and indeed it is plain enough. It would have exposed the Marqueis of *Huntlies* gift, which proceeded on the same forfeiture, as well as the Earl of *Argyl's*, to the same, and far greater hazard, as some came to be sensible, when they heard all. You see here at what rate the Earl was pursued, and on what grounds, before his taking of the Test came in hand.

After the Parliament was adjourned. there was a new design to apply to His Majestie for a *Commission*, of the same nature, for reviewing all the Earls rights, and to deprive him of his heritable offices, and, if possible, to burden him with more debts then his Estate was worth.

Upon

Upon which, the Earl waited on his Highness, and informed him more particularly, offering to make it appear, by unquestionable rights and evidences, That his Estate was not subject to any such review, as was intended, And that it might breed the Earle great trouble, but could have no effect in Law. To which his Highness *answered*, That a review could do no hurt: The Earl *said*, If a commission for a review were granted, some thing must be intended, and some thing must be done, and it was very like that some of these put into such a commission would be his enemies, at least small friends, and therefore intreated that if any intended to quarrel his rights, they and he and all their debates might be remitted to the *Ordinary Judicatories*: And indeed he had reason, to desire, it might be so, the *Ordinary Judicatories* being established by the ancient Laws of the Kingdom, not in order, or with respect to particular causes, and persons, but for the general, equal and impartial administration of Justice to all. Whereas the granting particular *Commissions*, for trying and judging such and such cases, and persons, cannot but expose to the just contrary inconveniences, there being certainly a vast difference betwixt a mans *finding* a judge indifferently constitut, and his *having* one expressly and particularly appointed, for his single affair, who might possibly think himself commissioner, rather to serve a turn, in an arbitrary way, then to administer fair Justice: but all this prevailed not, Only *his Highness said*, The commission should not be expedited untill the Earl knew the names of the Persons insert in it: Whereunto the *Earl answered*, That their might be many Persons, against whom he could make no legal exception, whom yet he might have very good reason to decline to be his particular judges, and to have his rights taken from the ordinary Judges, and committed to their examination, and all he might possibly gain by *excepting* would be to irritate: *Adding*, that as to his heritable offices, he had undoubtedly right to them, and they were rather honourable, then of advantage, that his family had them for faithful services to the Crown; and because they had served more faithfully then their Neighbours, and been more useful then others, in keeping the Countrey in peace, from Thieves and Robbers, therefore all the *broken men* and their *patrons*, were enemies to him, and his family, and desirous to have these offices out of his hands, but he resolved to doe as he had alwise done, to put himself in *His Majest. will*, and if His Majesty were resolved to have back all heritable offices, and should think fit after hearing him to have back his, His Majesty should have them, either freely, or for a just value: For though, they rendered the Earl no free yearly rent, as the Earl used them, yet he might be a sufferer in the want of them, if the Country were left open to Thieves and Robbers, which he hoped His Majesty would repair. His rights (as he had said in Parliament) were unquestionable, and oftentimes confirmed; Yet he was willing to surrender them all on his knee to His Majesty, but was not willing to have them torn from him with an affront by any other.

Upon this his Highness was pleased to allow the Earl a time, to go to the Country, to bring his Papers, and he was put in hopes no *Commission* should passe till his return, which was indeed observed.

In the mean time, the Earl did write to the *Earl of Murray*, His Majesty's Secretary, that he might have leave, to wait upon His Majesty, which His Majesty did graciously and readily grant; The Earl purposing, at his

return to *Edinburgh*, to beg the same favour of His Highness: But he found this motion more fatal to him then he could have at first expected so innocent a design could prove: For it was at first told him, he could not have access to kiss His Majesty's hand without taking the *Test*; then it dropt out that it was ill taken, His Majesty was at all addressed to, for leewe to kiss his hand: And at length it became plain that takeing the *Test* would not clear the way.

As the Earl was on his return to *Edinburgh*, to wait upon His Highness, and come the length of *Glasgow*, he got the news, that the late President of the Session, and He, were both turned out of it, and at his arrival at *Edinburgh*, several meetings of Council were appointed only to occasion his takeing of the *Test*: But the Earl having gone some miles out of town, was not present. At last a meeting of the Council was appointed expressly, and one of the clerks ordered to warn the Earl particularly to be present; whereof the Earl being advertised before the clerk came to him, he waited on His Highness, and had the honour of an opportunity after supper to speak to His Royall Highness, in his bed chamber: The Earl told His Highness, he was now returned, to make good his word, and to shew those writts and rights he had promised: But Sir (said the Earl) I have heard by the way of alterations, and that I am turn'd out of the Session: His Highness said, it was so: The Earl asked what nixt? His Highness said, he knew no more. The Earl said he had never sought that, nor any place, and he knew that place was at His Maj. dispose, and it might soon be better filled: But said the Earl, if it be to express a frown, it is the first I have had from His Majesty, thir thirty years; I know I have enemies, but they shall never make me alter my duetie, and resolution to serve His Majesty; I have served His Majesty in armes, and in his judicatures, when I knew I had enemies on my right hand, and on my left, and I will doe so still, But if any have power, to render His Majesty or your highness jealous of me, it will make my service the more useles to both, and the less comfortable to my selfe: His Highness said he knew no more then what he had said; the Earl then said, it was late, and he would wait on His Highness, some other time, about these matters: But the thing that at present presses (Says the Earle) is, That I hear one of the Clerks of Council is appointed to tell me to be at the Council, to morrow, I conceive, to take the *Test*; Pray, what is the haste? may not I, with Your Highnesses favour, have the time allowed by the Act of Parliament? His Highness said, No. The Earl urged it again, but in vain: And all the delay, he could obtain, was till tursday the third of November, the nixt Council day in course. The Earl said he was the less fond of the *Test*, that he found, that some that refused it were still in favour, and others that had taken it turned out, as the Register, At which His Highness only laugh't: But Sir, [said the Earl,] how comes your Highness to press the *Test* so hastily? Sure there are some things in it Your Highness doth not over much like: Then said His Highness, angrily, and in a passion most true, that *Test* was brought into the Parliament, without the Confession of Faith: But the late President caused put in the Confession, which makes it such as no honest man can take it: The Earl said he had the more reason to advise: Whereby you may see, whether His Highness then thought, the Confession was to be sworn to in the *Test*, or not.

After

(7.)

After this the Earl waited several times on His Highness, and made new attempts for the favour of a delay, but with no successe: What passed in Privat, shall not be repeated, except so far as is absolutely necessary to evince the Earl his innocency, and to shew that in what he did he had no ill design, nor did, in the least prevaricat, or give any offence willingly, but was ready to comply, as far as he could, with a good conscience: It was in this interval, that the Earl spoke with the Bishop of *Edinburgh*, & saw his *Vindication* of the *Test*, and all the *Explanations* I here send yow, only the Councils explanation was not yet thought on: And that all the Bishop did then urge the Earl with, beyond what is in his *Vindication*, was to have a care of a noble Family, and to tell him, that the opposing the exception of the Kings Sons, and Brothers, from taking the *Test*, had fired the kiln.

At the last upon Wednesday, the second of November, late, the Earl waited on his Highness, and did in the most humble, and easie expressions he could devise, decline the present taking of the *Test*; But if h. H. would needs have a present answer, *he beg'd* his favour, that he would accept of his refusing it in privat, which was denied again: Then, *he said*, if his Highness would allow him time, to goe home, and consider, he would, either give satisfaction, or the time prescribed by the Act of Parliament would elapse, and so he would go off in Course, and without noise: But this also His Highness absolutely refused: Upon which the Earl asked what good his appearing in Council, to refuse there, would doe? His Highness was pleased to answer, that he needed not appear, but to imploy some friend, to speak for him; And His Highness himselfe named one; this the Earl yielded to, as the best of a bad choice, and said, he should either use the person named by His Highness, or some other relation that were a Councillor, and in town: And, in compliance with his Highness pleasure, the next morning, the Earl drew a letter, for a warrand to the same Person his H. had named, for declaring his mind in Council; wherein he exprest his constant resolution to continue a true Protestant, and Loyal Subject, which were the true ends of the *Test*; But the letter concluding on a delay of taking the Oath, and his Highness having given some indication, how little pleasing that office was to him, neither that friend, nor any other would, by any means, accept of it.

Upon this the Earl drew a second, and shorter letter, to any that should that day Preside in Council; but after much discourse, it being suggested, that an explanation would be allowed, and the shorter the better, the Earl first drew one, suitable to his own thoughts; and it being thought too long, did instantly shorten it, and put it into his pocket, but withall said he would not offer it, till he knew His Highness pleasure, lest his Highness might take it ill that any had prevailed more with him, then himselfe; and therefore the Earl did refuse to go to the Council, or out of his chamber, till he had his approbation. A little after a coach was sent for the Earl, and it was told him, in the room without the Council chamber, that the Bishop of *Edinburgh* had spoke to His Highness, and signified to him, that the Earl was willing to take the *Test*, with an *Explanation*, and that the Bishop said, it would be very kindly accepted: These were the express words, and then (and not till then) the Earl went in to the Council, and delivered (that is pronounced) his *Explanation* closs by
His

His Highness, and directly towards him; so loud, and audible, that some in the furthest corner of the room acknowledged they heard it; Whereupon the Oath was administered, and the Earl took it; and His Highness with a well satisfied Countenance, and the honour of a smile, *Commanded* him to take his place: And while he sat by His Highness (which was his honour to do that day) His Highness spake several times privatly to him, and alwise very pleasantly.

And the Earl hath since protested to his freinds, that he thinks his Highness was, at the time, well peased, though some others, that wisht the Earl out of the Council, appeared surpris'd, and in some confusion.

The first thing came to be treated of in Council, after the Earl had taken his seat, was the Councils *Explanation*, at that time intended, and resolved to be allowed to the *Clergie only*, and no other, and withall not to be printed: To which the Earl refused to vote, which was afterwards made a ground of challenge: A little after, it being the post night, The Earl slept out, and went to his lodging, and though he acknowledges, he did not decline to give some friends an accompt of what had past, yet he was so far from spreading copies of his *Explanation*, at takeing the Oath; That he flatly refused to give a kind, and discreet friend, then in his chamber, a copie of it, lest it might go abroad: And the words being few, and publicly spoke, it is not strange they might be, almost perfectly, repeated, as, its known, the Clerks pretended to do, but the Kings Advocate having past from the accusation of *Spreading*, this is only mentioned to evidence how singly studious the Earl was to satisfie his own conscience, and how tender of giving offence, for *I can say truly* for him, he was never heard to dissuade any to take the *Test*, nor to disparage it, after it past in an Act; Only he refused to take it himselfe, *without ane Explanation*, which to stretch to a crime is beyond all example: I confess, he never cry'd it up as *superexcellent*, or divine, as some have done that can alter their toon, and decry it as much, when ever there shall be occasion.

Nixt morning the Earl waited on His Highness, expecting yesternights countenance, and indeed nothing lesse then what he met with; for begining to speak with His Highness in privat, his *Highness interrupted him*, and said he was not pleased with his *explanation*: The Earl said, he did not presume to give it till his Highness allowed him: His *Highness acknowledged*, that the Bishop of Edinburgh had told him, that the Earl intended ane explanation: But (*says His Highness*) I thought it had been some short one, like Earl Queesburries: The Earl answered that his Highness heard what he said: His *Highness said*, he did, but he was surpris'd: Then the Earl said, he had said the same thing, in privat, to his Highness, wherewith he, at that time, appeared satisfied: And the Earl being about to say more, in his own vindication, his *Highness interrupting him said*, well it is past with you, but it shall pass so with no other, which words, the Earl thought, did both confirm the Councils acceptance, and his *explanation*, and sufficiently clear him of all offence, if he had incurred any.

And whatever hath been his Highness resolution, or the Earl's misfortune since, the Earl is perswaded, that his Highness was resolved, then, to presse the affair no further: For though some had still the same animosities, and prejudices, against the Earl, yet hitherto, they had not adventured, to undertake, to extract; and forge such crimes, out of his words as afterwards

wards they did : And it was not, till privat suggestions were made, that Advocats were asked (as they were) if these words could be stretched to treason; and that (when the ablest denied) the Kings Advocat complied, and was ordered to draw the inditement, and some judges were engaged, and secured about it, as will appear, when ever his Majesty thinks it his interest, to take an exact triall of that whole affair.

The Earl did think (as I just now said,) his Highness saying, *it was past as to him*, was enough; and he was resolved to say no more for justifying himself; but seeing he is so hardly pressed, and his life, and honour at the stake, it is hoped his Highness will not disown what the Earl hath hitherto so respectfully concealed; and is now no less necessary to be spoke out, for his vindication. And that is, that besides that his Highness did allow the Earl to explain, and did hear his explanation, in Council, and approve it: The Earl did twice in privat, once before, and once after his Oath in Council, repeat, to his Highness, the same words, that the treason is now founded on: (*viz.*) *That the Earl meant not to bind up himself, to wish, and endeavour, in a Lawful way, and in his station any alteration, he thought to the advantage of Church, and state, not repugnant to the Protestant Religion, and his Loyalty: and that His Highness was so far from charging them with treason, that he said, plainly, both times, the Earl's scruples were unnecessary, and that the Test did not bind him up, as he imagined: adding further, the last time, that the Earl had cheated himself, for notwithstanding the explanation, he had taken the Test. To which the Earl only answered, that then His Highness should be satisfied.* Now, after all this, that treason should be so earnestly searched for, and so groundlessly found, in those words, *Is it not strange beyond all example? could it be treason, for the Earl to say, he wil not bind up himself where His Highness sayes so oft, and so plainly, it was not intended, that he, or any man, should be bound up?*

What past, the next day, after the Earl had taken the *Test*, and was received by the Council, is also proper for you to know. The Earl, being to take it as one of the *Commissioners of the Treasury*, it was commonly thought, that he, and the other *Commissioners* were to take it in the Exchequer: but after ten of the clock, about two hours after the Earl had parted from His Highness, one told him, there was a design upon him, to make him swear once more before the Council: and accordingly, at twelve, there was an extraordinary Council called in the *Abbey*, and there it was found, That the *Commissioners of Treasury*, as officers of the Crown, were to take the *Test*, before the Council; and it was told the Earl, that the *Exchequer* could not, that day, sit without him; And, to make the matter more solemn, It was resolved, that the Council should meet that after noon, and that His Highness should be present: So as soon as they were mett, the Oath was tendered, and the Earl offering to take it, and saying only these words, *as before*, The Earl of *Roxburgh*, never heard to speak in Council till then, stood up behind His Highness chair, and with Clamour, asked *what was said*: To whom His Highness was pleased to turn, and inform him: Upon which *Roxburgh*, prepared for the purpose, desired, that what the Earl of *Argyll* had said, the day before, might be repeated: Which the Earl, seeing a design upon him, did at first decline; till he was peremptorily put to it by His Highness, and he being

ingenuous, and thinking no course more proper to prevent mistakes of words, *He said*, he had a *note* of what he had said, in his pocket, which His Highness called for, very earnestly, and *Commanded* him to produce, which being done, and the paper read, so secure was the Earl of his innocency, that he was willing, upon the first motion, to sign it: But the, then, new President of the Session, now Chancellour, and the new Register, could not agree, whether it was fit, or not, the treason not yet appearing, when read in Council, as when they had talked of it, in privat: So the Earl was removed, and then called in, and after *these two* had wheted, and adjusted their inventions, he was desired positively to sign the paper, he had given in. To which he answered, he meant well, and truly did see no ill in the paper, why he might not, and if the words did please them then, as they did when they were first pronounced, he would do it: But, if they found the least matter of displeasure in them he would forbear: Whereupon being again removed, and called in, he was told, he had not given the satisfaction required by the Act of Parliament, in taking the *Test*: And so could not sit in the Council, and somewhat more was added, as if the matter drew deeper, but the particular words I doe not know: To which *the Earl said*, that he judged, All the Parliament meant was to exclud refusers of the *Test* from places of trust: And if he were judged a refuser, he submitted, but could conceive no greater danger in the matter, for he had served his Majesty faithfully within doors, and was resolved to doe so without doors, and so he made his obeisance, and went out. Nixt morning, being Saturday November 5. The Earl waited on his Royall Highness, and, amongst other things, told his Highness, he was strangely surpris'd, that the saying *He could not bind up himself in his station, and in a lawful way &c.* as was contained in that paper, was lookt on as a crime, teing he had said the same words to his Highness formerly, in privat, without any offence, to which *His Highness* gave no answer, but held his peace, which made the Earl make bold, to put him to remember his own words, and to ask him, what he had said, when the Earl formerly spoke to him: Then *His Highness* was pleas'd to say, he had forgot what he had said: To which the *Earl answered*, *the worse indeed for me; But Sir, here are the same words, I formerly said, without offence, what sayes your Highness now? What ill is in them? Let me know & I will vindicat my selfe.* And all his Highness at this second time said, was, what hath been above remarked, *That they were unnecessary words, that the Earl scrupled needlessly, that he was not tyed up, by that Oath, as he imagined;* And after a pause added, *As I have already told you; Well, you have cheated your self, you have taken the Test:* To which the Earl replyed, he hoped then his Highness was satisfied, (as above) His Highness then began to complain, that the Earl, the litle while he sat in Council, after he had taken the Oath, had not gone along, to approve the Councils explanation: *The Earl said* he had not heard the debate: And therefore, it was reasonable, to excuse him from voting. *His Highness returned*, a litle warmly, that the Earl knew the case well enough (which indeed was not unlike, and yet not at all strange, that the Earl could not vote, for that explanation, Seing he could not but know, the Parliament did intend the *Confession* should be sworn: And that he himselfe had taken it in that sence, as all others had done, before that explanation past in Council) but the Earl replying nothing

thing, His Highness continued, *That the Earl, and others, had designed to bring trouble upon an handfull of poor Catholicks; that would live peaceably, however they were used, but it should light upon others.*

A litle after, His Highness commanded the Earl not to go out of Town, till he waited on him, which the Earl said he should obey: But notwithstanding thereof, one of the Clerks of the Council was sent to the Earl, that same night, late, to intimat to him, not to go out of Town, till the Council should sit, upon the Tuesday thereafter.

Upon Moonday, the seventh of November, the Earle waited on His Highness again, and told him, he was surpris'd to get such a message from the Council, after his Highness had laid his own commands upon him, and asked what the Councils meaning could be: his Highness was pleas'd to say, he knew nothing, but referred all to themselves, at their meeting.

Upon Tuesday, the 8. of November, when the Council met, without ever calling the Earl, ane order was sent to him, by one of their Clerks, to enter himself prisoner in the Castle of *Edinburgh*, before twelve of the Clock, the next day, with a warrant to the *Deputie Governour*, to keep him prisoner, wherein the word *Sure-firmance* was struk out, which appeared to have been fairly writ: This order the Earl receaved, and obeyed it, with great submission, entering all alone in ane haikny Coatch: And when some of his relations, and persons of quality, offer'd to go along with him, he refus'd, *saying*, that if he were pursu'd at the instance of any other, he would accept of their civility, but seing he was pursu'd, at the instance of his Majesties Advocat, he would go, in the most humble way that he could think on, and have no body concerned but himself.

But all this did not hinder the Council, to write to his Majesty the Letter hereafter insert, giving judgment, before trial, without any hearing, and seeking leev'e to proceed to a process, which they likewise proceeded in, before any return came; as likewise, about the very date of this Letter, they emitted their explanation of the *Test*: Albeit in their Letter, they assert, *That they had been very careful nat to suffer any to take the Test with glosses and explanations.*

The Earl, some dayes after his entering prisoner into the Castle of *Edinburgh*, did write a Letter to his Royal Highness, *telling him*, that he had obeyed his Highness, and the Councils order, in entering prisoner in that place; that he had not written sooner, lest he might be thought too impatient of his punishment, which appeared to be the effects of an high displeasure, which, he hop'd, he nowise deserv'd; that he was resolv'd to continue in all duty, and obedience to his Majesty, and his R. Highness, and never to fail in any profession thereof, he had made; and begg'd to know, what satisfaction was expected, and where, and how, he might live with his Highness favour.

This Letter, at first, seem'd to please, and, the *Earl heard*, it did, But the only answer, directly return'd, was *Summonds* charging the Earl, *with leasing making, and depraving of Laws*, before any return from His Majestie: And after a return came, an other *Sumonds*, with sound of trumpet, containing *perjury, and treason*, added to the former crimes: Notwithstanding all which, fair weather was made, and it was given out, and likewise intimat to the Earl, by a particular message, from one of the *Club*, that no more was design'd, but to humble the Earl, and to take his heritable, and other offices from him, and his family: and when

his Highness was told *it was hard measure*, by such a process, and on such pretensions, to threaten *life, and fortune*, his Highness said, *life, and fortune? God forbid.*

What happened after these things, and how the processe was carried on, followes now in order: and for your more clear, and distinct information, I have sent you, several, very necessary and useful *papers*, with *indexes* on the margin, pointing at such passages, as more remarkably concern this affair: And the papers are.

I. Act Char. 2. P. 3. C. 6. Aug. 31. 1681. *Anent Religion, and the Test.*

II. Act J. 6. P. 1. C. 3. Anno 1567. *Anent the annulling of the Acts of Parliament made against God's Word, and for maintainance of Idolatry, in any times by past.*

III. Act J. 6. P. 1. C. 4. Anno 1567. *The Confession of the Faith, and Doctrine, &c.*

IV. Act J. 6. P. 1. C. 8. Anno 1567. *Anent the Kings Oath to be given at his Coronation.*

V. Act J. 6. P. 1. C. 9. *No Person may be judge, Procurator, Notar, nor member of Court who professeth not the Religion, &c.*

VI. Part of the Act J. 6. P. 2. C. 5. Anno 1609. *entituled, Act against Jesuits, seminary Priests, sayers, or hearers of Messe, Papists, and receptors of them.*

VII. Act J. 6. P. 3. C. 47. Anno 1572. *Adversaries of the true Religion are not Subjects to the King. Of Apostats.*

VIII. Act Char. 2. P. 2. C. 1. 16 Nov. 1669. *Act asserting his Majesties Supremacy, over all persons, and in all causes ecclesiastical.*

IX. *The Bishop of Aberdeens explication of the Test.*

X. *The explication of the Test by the Synod, and Clergie of Perth.*

XI. *Paraphrase on the Test:*

XII. *Grounds wherupon some of the conform Ministers scruple to take the Test.*

XIII. *Sederunt of the Council 22. September 1681.*

XIV. *The Earl of Queensberrys explanation.*

XV. *Sederunt 21. October 1681.*

XVI. *The Bishop of Edinburgh's paper, and vindication of the Test.*

XVII. *Sederunt 3. November 1681.*

XVIII. *Privy Councils explanation.*

XIX. *Sederunt 4. Nov. 1681.*

XX. *The Earl of Argyl's explication of the Test.*

XXI. *The explanation of his explication.*

XXII. *The Councils Letter to the King.*

XXIII. *The Kings Answer.*

XXIV. *The inditement.*

XXV. *Abstract of the Acts of Parliament, whereupon the inditement is founded.*

XXVI. *The Earl of Argyl's first Petition for Advocats.*

XXVII. *The Councils Answer.*

XXVIII. *The Earl of Argyl's second Petition.*

XXIX. *The Councils Answer.*

XXX. *The Earl of Argyl's Letter of Attorney.*

XXXI.

XXXI. Instrument thereon.

XXXII. Opinion of Lawyers of the Earls Case.

Which Papers may give you much light in this whole matter.

Anc

A C T

For securing the Protestant Religion, and enjoying a Test.

OUR Sovereign Lord, with his Estates of Parliament considering, That albeit by many good, and wholsom Laws, made by his Royal Grandfather, and Father, of glorious Memory, and by himself, in this, and the other Parliaments, since his happy restauration, The Protestant Religion is carefully asserted, established, and secured against Popery, and Fanaticisme; yet the restless Adversaries of our Religion, do not cease to propagate their errors, and to seduce His Majesties Subjects from their duty to God, and loyalty to his Vicegerent, and to overturn the established Religion, by introducing their superstitions, and delusions into this Church and Kingdom. And knowing, that nothing can more encrease the numbers, and confidence of Papists, and Schismatical Dissenters from the established Church, then the supine neglect of putting in execution the good Laws provided against them, together with their hopes to insinuate themselves into Offices, and places of trust, and publick employment: Therefore His Majesty, from his Princely, and pious Zeal, to maintain, and preserve the true Protestant Religion, contained in the *Confession of Faith*, recorded in the first Parliament of *King James the VI.* which is founded on, and agreeable to the written word of God. Doeth with advice, and consent of his Estates of Parliament, require and command all his Officers, Judges, and Magistrates, to put the Laws made against Popery, and Papists, Priests, Jesuits, and all persons of any other Order, in the Popish Church; especially against all sayers, and hearers of Messe, venters, and dispensers of forbidden books, and refetters of popish Priests, and excommunicat Papists; as also against all fanatical Separatists from this National Church, against Preachers at house, or field Conventicles, and the refetters, and harbourers of preachers who are intercommuned; against disorderly Baptisms, and Marriages, and irregular Ordinations, and all other schismatical disorders, to full, and vigorous execution, according to the tenor of the respective Acts of Parliament thereanent provided. And that His Majesties Princely Care, to have these Laws put in execution, against these enemies of the Protestant Religion, may the more clearly appear, He doth with advice and consent foresaid, statute and ordain, that the Ministers of each Parish give up in *October* yearly, to their respective Ordinaries, true and compleat Lists of all Papists, and schismatical with-drawers from the publick worship, in their respective Parishes, which Lists are to be subscribed by them: and that the Bishops give in a double of the said Lists, subscribed by them, to the respective Sheriffs, Stewards, Bayliffs of Royalty and Regality, and Magistrates of Burghs, to the effect, the said Judges may proceed against them, according to Law: As also the Sheriffs, and other Magistrats foresaid, are hereby ordained to give an accompt to His Majesties Privy-Council, in *December*, yearly, of their proceedings against those Papists and fanatical separatists, as they will be answerable at their highest peril. And that the diligence done by the Sheriffs, Baylies of Regalities, and other Magistrates foresaid, may be the better enquired into by the Council, the Bishops of the respective Diocesses, are to send exact doubles of the Lists of the Papists, and Fanatiks, to the Clerk of the Privy-Council, whereby the diligence of the Sheriffs, and other Judges of Courts may be comptrolled, and examined. And to cut off all hopes from Papists, and Fanatiks, of their being employed in Offices, and Places of publick trust, It is hereby

statute, and ordained, That the following Oath shall be taken by all persons in Offices, and Places of publick trust, Civil, Ecclesiastical, and Military; especially by all Members of Parliament, and all Electors of Members of Parliament; all Privy-Councillors, Lords of Session, Members of the Exchequer, Lords of Justiciary, and all other Members of these Courts, all Officers of the Crown and State, all Archbishops, and Bishops, and all Preachers, and Ministers of the Gospel whatsoever, all persons of this Kingdom, named or to be named, Commissioners of the Borders, all Members of the Commission for Church affaires, all Sheriffs, Steuards, Baylies of of Royalties and Regalities, Iustices of Peace, Officers of the Mint, Commisaries and their Deputies, their Clerks, and Fiscals, all Advocats, and Procurators before any of these Courts, all Writers to the Signet, all publick Notars, and other persons employed in writing, and agenting, The Lyon King at arms, Heralds, Purlevants, Messengers at Arms, all Collectors, Sub-Collectors, and Fermers of His Majesties Customs, and Excise, all Magistrats, Deans of Gild, Councillors and Clerks of Boroughs Royal & Regality, all Deacons of trades and Deacon-conveeners in the said Burghs, all Masters and Doctors in Universities, Colledges or Schools, all Chaplans in families, Pedagogues to children, and all Officers, and Soldiers in Armies, Forts or Militia, And all other persons in any publick Trust or office within this Kingdom, who shall publickly swear, and subscribe the said Oath, as follows: *viz.* Archbishops, Chief Commanders of the Forces, and Officers of the Crown and State, and Councillors, before the Secret Council: all the Lords of Session, and all members of the Colledge of Justice, and others depending upon them, before the Lords of Session: the Lords of Justiciary, and all these depending upon that Court, in the Iustice-Court: the Lords, and other Members of the Exchequer, before the exchequer; all Bishops before the Archbishops, all the Inferior Clergy, Commisaries, Masters & Doctors of Universities & Schools, Chaplans & Pedagogues, before the Bishops of the respective Diocesses; Sheriffs, Steuards, Baylies of Royalty and Regality, and these depending on these Iurisdicktions, before their respective Courts; all Provosts, Baylies, and others of the Boroughs, before the Town-Council; all Collectors and Fermers of the Kings Customs and Excise, before the Exchequer, the Commissioners of the Borders before the Privy-Council: all Iustices of the Peace before the Conveeners, and the Officers of the Mint before the General of the Mint; and the Officers of the Forces before the Commander in chief, and common Soldiers before their respective Officers: The Lyon before the Privy Council, and Heralds, Purlevants, and Messengers at Arms, before the Lyon. And His Majesty, with consent foresaid, Statutes and ordains, that all these who presently possess and enjoy any of the foresaid offices, publick Trusts, and Employments, shall take and subscribe the following Oath in one of the foresaid Offices in manner before prescribed betwixt ——— and the first of January next, which is to be recorded in the Registers of the respective Courts, and extracts thereof under the Clerks hand, to be reported to His Majesties Privy-Council betwixt ——— and the first of March 1682. and hereafter in any other Courts whereof they are Iudges or Members, the first time they shall sit or exercise in any of these respective Courts; and ordains, That all who shall hereafter be promoted to, or employed in any of the foresaid Offices, Trusts or Employments, shall at their entry into, and before their exercising thereof, take and subscribe the said Oath in manner foresaid, to be recorded in the Registers of their respective Courts, and reported to His Majesties Privy Council, within the space of forty days, after their taking of the same. And if any shall presume to exercise any of the said offices or Employments, or any publick Office or Trust within this Kingdom (the Kings Brothers and Sons only excepted) until they take the Oath foresaid, and subscribe the same to be recorded in the Registers of the respective Courts, they shall be declared incapable of all publick trust thereafter, and be further punished with the loss of their moveables and liferent - escheats the one half whereof is to be given to the Informer, and the other half to belong to his Majesty; and his Majesty with advice foresaid recommends to his Privy-Council to see this Act put to due and vigorous execution.

T E S T.

Containing the Oath to be taken by all Persons in publick Trust.

I Solemnly swear, in the presence of the eternal God, whom I invoke as Judge, and witnesse of the sincere intention of this my Oath, That I own and sincerely profess the true Protestant Religion, contained in the Confession of Faith, recorded in the first Parliament of King James the VI, and that I believe the same to be founded on, and agreeable to the written Word of God. And I promise and swear, That I shall adhere thereunto, during all the dayes of my life-time; and shall endeavour to educate my Children therein; *And shall never consent to any change or alteration contrary thereto, and that I disown and renounce all such Principles, Doctrines, or practices, whether Popish, or Fanatical which are contrare unto, and inconsistent with the said Protestant Religion, and Confession of Faith.* And for testification of my obedience to my most gracious Sovereign, Charles the II. I do affirm, and swear by this my solemn Oath, that the Kings Majesty is the only Supreme Governour of this Realm, over all persons, and in all causes, as well ecclesiastical as civil: And that no forreign Prince, Person, Pope, Prelate, State or Potentate, hath, or ought to have any Jurisdiction, Power, Superiority, Preheminency, or Authority, Ecclesiastical or Civil, within this Realm. And therefore I do utterly renounce, and forsake all foreign Jurisdctions, Powers, Superiorities, and Authorities: And do promise, that from henceforth I shall bear Faith, and true Allegiance to the Kings Majesty, his Heirs and lawful Successors; and to my power shall assist and defend all Rights, Jurisdctions, Prerogatives, Priviledges, Preferments, and Authorities belonging to the Kings Majesty, his Heirs and lawful Successors. And I further affirm and swear by this my solemn Oath, That I judge it unlawful for Subjects, upon pretence of Reformation, or any other pretence whatsoever, to enter into Covenants or Leagues, or to convocat, convene, or assemble in any Councils, Conventions or Assemblies, to treat, consult or determine in any matter of State, Civil or Ecclesiastick, without his Majesties special command, or expresse licence had thereto; or to take up arms against the King, or these Commisfionate by him. And that I shall never so rise in arms, or enter into such Covenants or Assemblies: And that there lies no obligation on me from the National Covenant, or the Solemn League and Covenant (commonly so called) or any other manner of way whatsoever, to endeavour any change or alteration in the Government, either in Church or State, as it is now established by the Laws of this Kingdom. And I promise and swear, That I shall, with my utmost power, defend, assist and maintain his Majesties Jurisdiction foresaid against all deadly. And I shall never decline his Majesties Power and Jurisdiction, as I shall answer to God. And finally, I affirm and swear, That this my solemn Oath is given in the plain genuine sense, and meaning of the words, without any equivocation, mental reservation, or any manner of evasion whatsoever; and that I shall not accept or use any dispensation from any creature whatsoever; *So help me God.*

Act J. 6. P. 1. C. 3. Anno 1567.

Anent the annulling of the Acts of Parliament, made against God His Word, and for maintainance of Idolatrie, in any tymes bypast.

ITem, our Sovereigne Lord, with advice of his dearest Regent, and three Estates of this present Parliament, ratifies and approves the Act under-written, made in the Parliament holden at *Edinburgh*, the 24. day of *August*, the year of God anethousand five hundred threescore years. And of new in this present Parliament, statutes and ordains the said Act, to be as a perpetual Law to all our Sovereigne Lords leiges in all times coming. Of the quhilk the tenour followes. The quhilk day, for sameikle as there has been divers and sundrie Acts of Parliament, made in King *James the I. II. III. IV. and V's* times, *Kings of Scotland* for the time, and also in our Sovereigne Ladies time, not agreeing with Gods holy Word, and by them divers persons take occasion to maintaine Idolatrie, and Superstition, within the Kirk of God, and repress such persons as were professors of the said Word, wherethrow divers innocents did suffer. And for escheving such inconveniences in time coming, the three Estates of Parliament has annulled, and declared all such Acts made in tymes bypast, not agreeing with God His Word, and now contrary to the *Confession of Faith*, according to the said Word, published in this Parliament, to be of none avails, force nor effect. And decerns the said Acts and every one of them, to have no effect nor strength; in time to come: But the same to be abolished and extinguished: for ever in so far as any of the foresaid Acts are repugnant, and contrary to the *Confession of Faith*, and Word of God foresaid, ratified and approved by the Estates in this present Parliament. And therefore decerns and ordains, the Contraveeners of the same Act in any time hereafter to be punished, according to the Lawes. Of the *Quhilk Confession of the Faith* the tenour followes.

T H E

Confession of the Faith, and Doctrine,

Believed, and professed by the Protestantis of Scotland, exhibited to the Estates of the same in Parliament, and by their publick Vots authorized, as a Doctrine grounded upon the infallible Word of God.

As the same Confession stands recorded.

Ja. 6. p. 1. c. 4. Anno 1567.

I. Of God.

WE confesse, and acknowledge one onely God, to whom onely we must cleave, whom onely we must serve, whom onely we must worship, and in whom onely we must put our trust, who is Eternal, Infinit, Unmeasurable, Incomprehensible, Omnipotent, Invisible, one in substance, and yet distinct in three Persons, the Father, the Sonne, and the holie Ghost. By whom we confesse and believe all things in heaven and earth, aswel Visible as Invisible; to have been created, to be retained in their being, and to be ruled, and guided by his inscrutable Providence, to sik end, as his Eternal Wisdome, Goodness, and Justice has appointed them, to the manifestation of his own glorie.

II. Of the Creation of Man.

WE confels and acknowledge, this our God to have created man, to wit, our first father *Adam*, in his own Image and similitude, to whom he gave Wisdome, Lordship, Justice, Free-will, and clear knowledge of himself, so that in the hail nature of man there could be noted no imperfection. Fra quhilk honour and perfection, Man and Woman did both fall, the Woman being deceived be the Serpent, and Man obeying the voyce of the Woman, both conspiring against the Sovereign Majestie of God, who in expresse words had before threatned death, if they presumed to eat of the forbidden Tree.

III.

III. Of Original Sinne.

BE quihilk transgression, commonlie called Original Sinne, was the image of God utterlie Bedefaced in Man, and he and his posteritie of nature became enemies to God, slaves to Satan, and servants unto sin, in sameikle that death everlasting has had, and shall have power and dominion, over all that have not been, are not, or shall not be regenerated from above, quihilk regeneration is wrought by the power of the holie Ghost working in the hearts of the elect of God and assured faith in the promise of God, revealed to us in his word, be quilk Faith we apprehend Christ Jesus with the graces, and benefits promised in him.

IV. Of the Revelation of the Promise.

FOR this we constantlie believe, that God after the fearful and horrible defection of man fra his obedience, did seek Adam again, call upon him, rebuke his sin, convict him of the same, and in the end made unto him and most joyful promise, to wit, that the seed of the woman should break down the serpents head, that is, he should destroy the works of the Devil; quihilk promise, as it was repeated, and made mair cleare from time to time; so was it embraced with joy, and maist constantly received of all the faithful from Adam to Noah, from Noah to Abraham, from Abraham to David, and so forth to the incarnation of Christ Jesus, all (we mean the faithful fathers under the law) did see the joyful day of Christ Jesus, and did rejoyce.

V. Of The continuance, increase, and preservation of the Kirk.

WE maist constantly believe that God preserved, instructed, multiplyed, honoured, decreed, and from death called to life, his Kirk, in all ages, fra Adam till the coming of Christ Jesus in the flesh: For Abraham he called from his fathers countrey, him he instructed, his seed he multiplyed, the same he marvelously preserved, and mair marvelously delivered from the bondage and tyranny of Pharaoh; to them he gave his Laws, constitutions and ceremonies, them he possessed in the Land of Canaan, to them after Judges, and after Saul, he gave David to be King, to whom he made promise, that of the fruit of his loynes should and sit for ever upon his regnall seat: To this same people, from time to time, he sent Prophets to reduce them to the right way of their God, from the quihilk oftentimes they declined, by Idolatry: and albeit that for their stubborn contempt of justice, he was compelled to give them into the hands of their enemies, as before was threatened by the mouth of Moses, in sameikle that the hally City was destroyed, the temple burnt with fire, and the haile land left desolate, the space of lxx years, yet of mercy did he reduce them again to Jerusalem, where the City, and Temple were reedified, and they against all temptations and assaults of Satan, did abide till the Messias came, according to the promise.

VI. Of the Incarnation of Christ Jesus.

WHEN the fulness of time came, God sent his Son, his eternal wisdom, the substance of his own glory, into this World, who took the nature of man-head of the substance of woman, to wit of a virgin, and that by operation of the Holy Ghost, and so was born the just seed of David, the Angel of the great counsell of God, the very Messias promised, whom we confess and acknowledge Emmanuel, very God and very man, two perfect natures united, and joyed in one person. By quihilk our Confession we condemn the damnable, and pestilent heresies of Arius, Marcion, Eutiches, Nestorius, and sik others, as either did deny the eternitie of his God-head, or the veritie of his human nature, or confounded them, or yet divided them.

VII. Why it behoved the Mediator to be very God, and very man.

WE acknowledge, and confess, that this maist wonderous conjunction betwixt the God-head, and the man-head in Christ Jesus, did proceed from the eternal and immutable decree of God, from quihilk all our salvation springs, and depends.

VIII. Of Election.

FOR that same eternal God and Father, who of meer grace elected us in Christ Jesus his son, before the foundation of the World was laid, appointed him to be our head, our brother, our pastor, and great Bishop of our souls: But because that the enmity betwixt the justice of God and our sins was sik, that no flesh by it self could, or might have attained unto God, it behoved that the Son of God should descend unto us, and take to himself a bodie of our bodie, flesh of our flesh, and bone of our bones, and to become the Mediator betwixt God and man, giving power to so many as believe in him to be the sons of God, as himself does witness. *I passe up to my Father, and to your Father, to my God, and to your God:* Be quihilk maist hally fraternity whatsoever we have tynt in Adam is restored unto us again: And for this cause we are not afraid to call God our Father, not sameikle because he has created us quihilk we have common with the reprobate) as for that, that he has given to us his only Son,

to be our brother, and given unto us grace to acknowledge and imbrace him for our only Mediator as before is said; it behoved farther the Messias and Redeemer to be very God and very man, because he was to underly the punishment due for our transgressions, and to present himself in the presence of his Fathers Iudgement, as in our person, to suffer for our transgression, and inobedience, by death to overcome him that was author of death. But because the onely God-head could not suffer death, neither yet could the onely man-head overcome the famine, he joynd both together in one person, that the imbecillity of the one should suffer, and be subject to death (quillk we had deserved) And the infinite and invincible power of the other, to wit, of the goodhead should triumph, and purchase to us life, liberty, and perpetual victory: And so we confess, and maist undoubtedly believe.

IX. Of Christs Death, Passion, and Burial.

THAT our Lord Iesus offered himself a voluntary Sacrifice unto his Father for us, that he suffered contradiction of sinners, that he was wounded, and plagued for our transgressions, that he being the clean innocent Lamb of God, was damned in the presence of an earthly Iudg, that we should be absolved before the tribunal seat of our God, that he suffered not only the cruel death of the Crosse [quillk was accursed by the sentence of God,] but also that he suffered for a season the wrath of his Father, quillk sinners had deserved. But yet we avow, that he remained the only well-beloved and blessed Son of his Father, even in the midst of his anguish, and torment, quillk he suffered in body and soul, to make the full satisfaction for the sins of his people. After the quillk, we confess, and avow that there remains no other Sacrifice for sin, quillk if any affirm, we nothing doubt to avow, that they are blasphemous against Christs death, and the everlasting purgation, and satisfaction purchased to us by the same.

X. Of his Resurrection.

WE undoubtedly believe, that in samiekle as it was impossible that the dolours of death should retain in bondage the Author of life, that our LORD JESUS crucified, dead, and buried, who descended into hell, did rise again, for our justification, and destroying him who was the Author of death, brought life again to us that were subject to death, and to the bondage of the same. We know, that his Resurrection was confirmed by the testimony of his very enemies, by the Resurrection of the dead, whose Sepulchres did open, and they did rise, and appeared to many, within the City *Jerusalem*. It was also confirmed by the testimony of his Angels, and by the senses and judgments of his Apostles, and of others, who had conversation, and did eat and drink with him, after his Resurrection.

XI. Of his Ascension,

WE nothing doubt, but the self-same body, quillk was born of the Virgin, was crucified, dead, and buried, and quillk did rise again, did ascend into the heavens, for the accomplishment of all things, where, in our names, and for our comfort, he has received all power in heaven, and earth, where he sits at the right hand of the Father, inaugurate in his Kingdom, Advocate and onely Mediator for us. *Quillk Glory, Honour and Prerogative, be alone among the brethren all possess,* till that all his Enemies be made his footstool, as that we undoubtedly believe they shall be in the final judgement: To the execution whereof we certainly believe, that the same our Lord Iesus shall as visibly return, as that he was seen to ascend. And then we firmly believe, that the time of refreshing and restitution of all things shall come, in samiekle that they that fra the beginning have suffered violence, injury and wrong, for righteousness sake, shall inherit that blessed immortality promised fra the beginning. But contrariwise, the stubborn, inobedient, cruell oppressours, filthy persons, idolaters, and all such sorts of unfaithfull, shall be cast into the dungeon of utter darkness, where the worm shall not die, neither yet their fire shall be extinguished. The remembrance of quillk day, and of the judgement to be executed in the same, is not onely to us a bridle, whereby our carnal lusts are restrained, but also such inesteemable comfort, that neither may the threatening of Worldly Princes, neither yet the fear of temporal death, and present danger, move us to renounce and forsake that blessed society which we the members have with our Head and onely Mediator, Christ Iesus, whom we confess and avow to be the Messias promised, the only head of his Kirk, our just Lawgiver, our only high Priest, Advocate and Mediator: *In which Honours and Offices, if Man or Angel presume to intrude themselves, we utterly detest and abhor them, as blasphemous to our Sovereign and Supreme Governour, Christ Iesus.*

XII. Of Faith in the Holy Ghost.

THIS our Faith, and the assurance of the same, proceeds not from flesh and blood; that is to say, from no natural powers within us, but is the inspiration of the Holy Ghost: Whom we confess God equal with the Father, and with the Son, who sanctifies us, and brings us in all verity, by his own operation, without whom we should remain for ever enemies to God, and ignorant of his Son Christ Iesus: For of nature we are so dead, so blind, and so perverse,

perverse, that neither can we feel when we are pricked, see the light when it shines, nor assent to the will of God when it is revealed, unless the Spirit of the Lord Jesus quicken that which is dead, remove the darkness from our minds, and bow our stubborn hearts to the obedience of his blessed will. And so as we confess, that God the Father created us, when we were not: As his Son, our Lord Jesus, redeemed us, when we were enemies to him; so also do we confess, that the Holy Ghost doth sanctify, and regenerate us, without all respect of any merit proceeding from us; be it before, or be it after our Regeneration. To speak this one thing yet in more plain words: As we willingly spoil our selves of all honour, and glory of, our own Creation, and Redemption; so do we also of our Regeneration, and Sanctification: For of our selves we are not sufficient to think one good thought, but he who has begun the work in us is only he that continues us in the same, to the praise and glory of his undeserved Grace.

XIII. *Of The cause of good works.*

SO that the cause of good works, we confess to be not our free will, but the Spirit of the Lord Jesus, who dwelling in our hearts by true faith, brings forth such works as God has prepared for us to walk in. For this we most boldly affirm, that blasphemy it is to say, that Christ abides in the hearts of such as in whom there is no Spirit of Sanctification. And therefore we fear not to affirm, that Murderers, Oppressors, cruel Persecutors, Adulterers; Whoremongers, filthy Persons, Idolaters, Drunkards, Thieves, and all workers of Iniquity, have neither true Faith, neither any portion of the Spirit of the Lord Jesus, so long as obstinately they continue in their wickedness. For how soon that ever the Spirit of the Lord Jesus [which Gods elect children receive by true Faith] takes possession in the heart of any man, so soon does he regenerate, and renew the same man. So that he begins to hate that which before he loved, and begins to love that which before he hated, and from thence comes that continual battel which is betwixt the Flesh, and the Spirit in Gods Children; still the flesh and natural man, according to its own corruption, lusts for things pleasant and delectable unto it self, and grudges in adversity, is lifted up in prosperity, and at every moment is prone and ready to offend the Majesty of God. But the Spirit of God, which gives witnessing to our Spirit, that we are the Sons of God, makes us to resist filthy pleasures, and to groan in Gods presence, for deliverance from this bondage of corruption. And finally, to triumph over sin, that it reign not in our mortal bodies. This battel hath not the carnal man, being destitute of Gods Spirit, but does follow, and obey sin with greediness, and without repentance, even as the Devil, and their corrupt Lusts do prick them. But the Sons of God, as before was said, do fight against sin, do sob and mourn, when they perceive themselves tempted in iniquity: and if they fall, they rise again with earnest and unfeigned repentance, and these things they do not by their own power, but by the power of the Lord Jesus, without whom they were able to do nothing.

XIV. *What works are reputed good before God.*

WE confess and acknowledg, that God has given to man his holy Law, in which not only are forbidden all such work as displease, and offend his godly Majesty, but also are commanded all such as please him, and as he has promised to reward. And these works be of two sorts. The one is done to the honour of God, the other to the profit of our Neighbours: and both have the revealed will of God for their assurance. To have one God, to worship, and honour him, to call upon him in all our troubles, to reverence his holy Name, to hear his word, to beleve the same, to communicate with his holy Sacraments, are the works of the first Table. To honour Father, Mother, Princes, Rulers, and Superior Powers: to love them, to support them, yea to obey their charges (*not repugning to the commandment of God*) to save the lives of Innocents, *to repress Tyranny, to defend the oppressed*, to keep our bodies clean and holie, to live in soberness, and temperance, to deal justly with all men both in word and deed: And finally, to repress all appetite of our Neighbours hurt, are the good works of the second Table, which are most pleasing and acceptable unto God, as those works that are commanded by himself: The contrary whereof is sin most odious, which always displeases him, and provokes him to anger; As not to call upon him alone, when we have need, nor to hear his word with reverence, to condemn and despise it, to have or to worship Idols, to maintain, & defend Idolatry, lightly to esteem the reverend name of God, to prophane, abuse, or contemn the Sacraments of Christ Jesus, to disobey or resist any that God has placed in Authority [*while they pass not over the bounds of their Office*] to murder; or to consent thereto, to bear hatred, or to let Innocent blood be shed, if we may withstand it. And finally, the transgression of any other commandment in the first or second Table, we confess and affirm to be sin, by the which Gods anger and displeasure is kindled against the proud unthankful world. So that good works we affirm to be those only, that are done in Faith, and at Gods commandment, who in his Law has expressed what the things be that please him. And evil works we affirm to be not only those that expressly are done against Gods commandment; *but those also that in matters of Religion, and worshipping of God, has no other assurance but the invention and opinion of man*: which God from the beginning has ever rejected, as by the Prophet Esay, and by our Master Christ Jesus, we are taught in these words, *In vain do they worship me, teaching for doctrines the precepts of men.*

XV. Of The perfection of the Law, and the imperfection of Man.

THe Law of God we confesse, and acknowledge most just, most equal, most holy, and most perfect, commanding those things which being wrought in perfection, were able to give life, and able to bring man to eternal felicity. But our nature is so corrupt, so weak, and so imperfect, that we are never able to fulfil the works of the Law in perfection. Yea, if we say we have no sin, even after we are regenerated, we deceive our selves, and the verity of God is not in us. And therefore it behoves us to apprehend Christ Jesus, with his Justice, and Satisfaction, who is the end, and accomplishment of the Law, by whom we are set at this liberty, that the Curse, and Malediction of God fall not upon us, albeit we fulfil not the same in all points. For God the Father beholding us in the body of his Son Christ Jesus, accepts our imperfect obedience, as it were perfect, and covers our works, which are defiled with many spots, with the Justice of his Son. We do not mean, that we are so let at liberty, that we owe no obedience to the Law (for that before we have plainly confessed,) but this we affirm, that no man in earth (Christ Jesus only except) has given, gives, or shall give in work, that obedience to the Law, which the Law requires. But when we have done all things, we must fall down, and unfeignedly confesse, that we are unprofitable Servants. And therefore whosoever boasts themselves of the merits of their own works, or put their trust in the works of Supererogation, boast themselves in that which is naught, and put their trust in damnable Idolatry.

XVI. Of the Kirk.

AS we believe in one God, Father, Son, and Holy Ghost; so do we most constantly believe, that from the beginning there has been, and now is, and to the end of the World shall be, one Kirk; that is to say, one company and multitude of men chosen of God, who rightly worship, and embrace him by true Faith in Christ Jesus, *who is the only Head of the same Kirk*, which also is the Body, and Spouse of Christ Jesus, which Kirk is Catholick, that is, Universal, because it contains the Elect of all ages, of all Realms, Nations, and Tongues, be they of the *Jews*, or be they of the *Gentiles*, who have Communion, and Society with God the Father, and with his Son Christ Jesus, through the Sanctification of his Holy Spirit; and therefore it is called the Communion, not of prophane persons, but of Saints, who as Citizens of the Heavenly *Jerusalem*, have the fruition of the most inestimable benefits, to wit, of one God, one Lord Jesus, one Faith, and one Baptism: Out of the which Kirk there is no other life, nor eternal felicity. And therefore we utterly abhor the blasphemy of them that affirm, that men which live according to Equity, and Justice shall be saved, what Religion that ever they have professed: For as without Christ Jesus there is no other Life nor Salvation; so shall there none be participant thereof, but such as the Father has given unto his Son Christ Jesus, and they that in time come unto him, avow his Doctrine, and believe into him (we comprehend the Children with the faithful Parents.) This Kirk is invisible, known only to God, who alone knows whom he has chosen, and comprehends as well (as said is) the Elect that be departed, commonly called the Kirk triumphant, as those that yet live, and fight against sin, and Satan, and shall live hereafter.

XVII. Of The Immortality of the Soul.

THe Elect departed are in peace, and rest from their labours: not that they sleep, and come to a certain oblivion, as some Phantasticks do affirm; but that they are delivered from all fear, and torment, and all temptation, to which we, and all God's Elect are subject in this life; and therefore do bear the name of the Kirk-Militant: As contrarywise, the reprobate, and unfaithful departed, have anguish, torment, and pain, that cannot be expressed: So that neither are the one nor the other in such sleep, that they feel not their happiness nor torment, as the Parable of Christ Jesus in the 16. of *Luke*, his words to the Thief, and these words of the Souls crying under the Altar: *O Lord, thou that art righteous, and just, How long shalt thou not revenge our blood upon these that dwell in the earth?* does declare.

XVIII. Of the Notes by the which the true Kirk is discerned from the false, and who shall be Judge of the Doctrine.

BEcause that Satan from the beginning has laboured to deck his pestilent Synagogue with the title of the Kirk of God, and has inflamed the hearts of cruel murderers, to persecute, trouble, and molest the true Kirk, and Members thereof, as *Cain* did *Abel*, *Ishmael* *Isaac*, *Esau* *Jacob*, and the whole Priesthood of the *Jews*, Christ Jesus himself, and his Apostles after him. It is one thing most requisite, that the true Kirk be discerned from the filthy Synagogues, by clear, and perfect Notes, lest we being deceived, receive and embrace to our own condemnation, the one for the other. The notes, signs, and assured tokens, whereby the immaculate Spouse of Christ Jesus is known from the horrible Harlot, the Kirk Malignant, we affirm, are neither Antiquity, Title usurped, Lineal descent, Place appointed, nor Multitude of men approving an error: *Cain* in Age and Title was preferred to *Abel* and *Seth*: *Jerusalem* had prerogative above all places of the earth, where also were the Priests lineally descended from *Aaron*. And greater numbers followed the *Scribes*, *Pharisees*, and *Priests*, than unfeignedly believed and approved Christ

Christ Jesus, and his Doctrine: And yet as we suppose, no man of sound judgment will grant, that any of the forenamed were the Kirk of God. The notes therefore of the true Kirk of God, we believe, confess, and avow to be, first, the true preaching of the Word of God, in the which God has revealed himself unto us, as the Writings of the Prophets and Apostles do declare. Secondly, the right Administration of the Sacraments of Christ Jesus, which must be annexed unto the word, and promise of God, to seal, and confirm the same in our hearts. Lastly, *Ecclesiastical Discipline uprightly ministred, as God's Word prescribes, whereby Vice is repressed, and Virtue nourished.* Wheresoever then these former notes are seen, and of any time continue (be the number never so few, about two or three) there without all doubt is the true Kirk of Christ, who according unto his promise, is in the midst of them: Not that universal, of which we have before spoken, but particular, such as was in *Corinthus, Galatia, Ephesus*, and other places, in which the Ministry was planted by *Paul*, and were of himself named the Kirks of God: and such Kirks we the Inhabitants of the Realm of *Scotland*, Professors of Christ Jesus, profess our selves to have in our Cities, Towns, and places reformed: For the Doctrine taught in our Kirks is contained in the written Word of God to wit, in the Books of the Old & New Testament, in those Books, we mean, which of the Ancients have been reputed Canonical. In the which we affirm, that all things necessary to be believed, for the salvation of Mankind, is sufficiently expressed. The interpretation whereof, we confess, neither appertains to private nor publick persons, neither yet to any Kirk, for any preheminance, or prerogative, personally and locally, which one has above another, but appertains to the Spirit of God, by the which also the Scripture was written. When controversie then happens, for the right understanding of any place, or sentence of Scripture, or for the reformation of any abuse within the Kirk of God, we ought not so much to look what men before us have said or done, as unto that which the H. Ghost uniformly speaks, within the body of the Scriptures, and unto that which Christ Jesus himself did, and commanded to be done. For this is one thing universally granted, that the Spirit of God, which is the Spirit of Unity, is in nothing contrarious unto himself. If then the Interpretation, Determination, or Sentence of any Doctor, Kirk or Council, repugne to the plain word of God, written in any other place of the Scripture, it is a thing most certain, that there is not the true understanding & meaning of the Holy Ghost, altho that Councils, Realms and Nations have approved, and received the same: For we dare not receive nor admit any interpretation, which repugnes to any principal point of our faith, or to any other plain text of Scripture, or yet unto the rule of charity.

XIX. Of The Authority of the Scriptures.

AS we believe, and confess the Scriptures of God sufficient to instruct, and make the man of God perfect; so do we affirm, and avow the Authority of the same, to be of God, and neither to depend on Men, nor Angels. We affirm therefore, that such as alledge the Scripture, to have no other Authority, but that which it has received from the Kirk, to be blasphemous against God, and injurious to the true Kirk, which always hears, and obeys the voice of her own Spouse, and Pastor, but takes not upon her to be Mistress over the same.

XX. Of General Councils, of their Power, Authority, and cause of their Convention.

AS we do not rashly damn that which godly men assembled together in General Council, lawfully gathered, have proponed unto us; so without just examination, dare we not receive whatsoever is obtruded unto men under the name of General Councils: For plain it is, as they were men, so have some of them manifestly erred, and that in matters of great weight and importance. So far then as the Council proves the determination, and commandment that it gives, by the plain word of God; so soon do we reverence and embrace the same. But if men under the name of a Council, pretend to forge unto us new Articles of our Faith, or to make Constitutions repugning to the Word of God, then utterly we must refuse the same, as the Doctrine of Devils, which draws our souls from the voice of our only God, to follow the Doctrines and Constitutions of men. The cause then why that General Councils convened, was neither to make any perpetual Law, which God before had not made, neither yet to forge new Articles of our Belief, nor to give the Word of God Authority, much less to make that to be his Word, or yet the true Interpretation of the same, which was not before, by his holy will, expressed in his word: But the cause of Councils (we mean of such as merit the name of Councils) was partly for confutation of Heresies, and for giving publick confession of their Faith to Posterity following, which both they did by the authority of Gods written Word, and not by any Opinion or Prerogative, that they could not erre, by reason of their general Assembly. And this we judge to have been the chief cause of General Councils. The other was for good Policy, and Order to be constituted, and observed in the Kirk, in which (as in the house of God) it becomes, all things to be done decently, and in order. Not that we think, that any policy, and order in Ceremonies, can be appointed for all ages, times, and places: For as Ceremonies, such as men have devised, are but temporal, so may, and ought they to be changed, when they rather foster Superstition, than that they edifie the Kirk, using the same.

XXI. *Of the Sacraments.*

AS the Fathers under the Law, besides the verity of the Sacrifices, had two chief Sacraments, to wit, Circumcision and the Pascheover, the despisers and contempters whereof were not reputed of Gods People; so do we acknowledg and confesse, that we now in the time of the Evangel, have two chief Sacraments only instituted by the Lord Iesus, and commanded to be used of all these that will be reputed Members of his Body; to wit, Baptism, and the Supper or Table of the Lord Iesus, called the Communion of his Body and Blood. And these Sacraments as well of Old, as New Testament, were instituted of God, not only to make a visible difference betwixt his People, and these that were without his League; but also to exercise the faith of his Children, and by participation of the same Sacraments to seal in their hearts the assurance of his promise, and of that most blessed conjunction, union and society, which the Elect have with their Head Christ Iesus. And thus we utterly damn the vanity of them, that affirm Sacraments to be nothing else but naked and bare signs. No, we assuredly believe, that by Baptism we are ingrafted in Christ Iesus, to be made partakers of his Justice, by which our sins are covered and remitted. And also that in the Supper rightly used, Christ Iesus is so joyned with us, that he becomes very nourishment, and food of our souls. Not that we imagine any Transubstantiation of Bread into Christs natural Body, & of Wine into his natural Blood, as the Papists have perniciously taught, and damnably believed; but this Union and Conjunction which we have with the Body and Blood of Christ Iesus, in the right use of the Sacraments, is wrought by the operation of the Holy Ghost, who by true faith carries us above all things that are visible, carnal, and earthly, and makes us to feed upon the Body and Blood of Christ Iesus, which was once broken and shed for us; who now is in Heaven, and appears in the presence of his Father for us: And yet notwithstanding the far distance of place which is betwixt his body now glorified in Heaven, and us now mortal in this earth; yet we most assuredly believe, that the bread which we break, is the Communion of Christs Body, and the Cup which we bleas, is the Communion of his Blood. So that we confesse, and undoubtedly believe that the faithful in the right use of the Lords Table, do so eat the Body and drink the Blood of the Lord Iesus, that he remains in them, and they in him. Yea, they are so made flesh of his flesh, and bone of his bones, that as the eternal Godhead has given to the flesh of Christ Iesus (which of its own condition and nature, was mortal and corruptible) life and immortality; so does Christ Iesus his flesh and blood eaten and drunken by us, give unto us the same Prerogatives. Which albeit we confesse are neither given unto us at that time only, neither yet by the proper power and virtue of the Sacrament only; yet we affirm that the faithful in the right use of the Lords Table has such Conjunction with Christ Iesus, as the natural man cannot apprehend. Yea, and further we affirm, That albeit the faithful oppressed by negligence, and manly infirmity, does not profit, so much as they would, in the very instant Action of the Supper; yet shall it after bring fruit forth, as lively seed sown in good ground. For the Holy Spirit which can never be divided from the right Institution of the Lord Iesus, will not frustrate the faithful of the fruit of that mystical Action; but all this, we say, comes of true faith, which apprehends Christ Iesus, who only makes this Sacrament effectual unto us. And therefore whosoever flanders us, as that we affirm or believe Sacraments to be naked and bare signs, do injury unto us, and speak against the manifest truth. But this liberally and frankly we confesse, that we make a distinction betwixt Christ Iesus in his Eternal substance, and betwixt the Elements in the sacramental signs; so that we will neither worship the signs in the place of that which is signified by them; neither yet do we despise and interpret them as unprofitable and vain, but do use them with all reverence, examining our selves diligently, before that so we do; because we are assured by the mouth of the Apostle, that such as eat of that Bread, and drink of that Cup unworthily, are guilty of the Body, and Blood of Christ Iesus.

XXII. *Of the right Administration of the Sacraments.*

THAT Sacraments be rightly ministred, we judge two things requisite: the one, that they be ministred by lawful Ministers, whom we affirm to be only these that are appointed to the preaching of the word, into whose mouths God has put some sermon of Exhortation, they being men lawfully chosen thereto by some Kirk. The other, that they be ministred in such Elements, and in such sort as God has appointed, else we affirm that they cease to be the right Sacraments of Christ Iesus. And therefore it is, that we fly the Doctrine of the Papistical Kirk in participation of their Sacraments. First, because their Ministers are no Ministers of Christ Iesus; yea (which is more horrible) they suffer Women, whom the Holy Ghost will not suffer to teach in the Congregation, to Baptize. And secondly, because they have so adulterated both the one Sacrament, and the other, with their own inventions, that no part of Christs Action abides in the original purity: For Oyl, Salt, Spittle, and such like in Baptism, are but mens inventions; Adoration, Veneration, bearing throw Streets and Towns, and keeping of bread in boxes, are Prophanation of Christs Sacraments, and nouse of the same. For Christ Iesus said, *Take, eat, &c. do ye this in remembrance of me*: By which words and charge he sanctified Bread and Wine to the Sacrament of his Holy Body and Blood, to the end that the one should

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be eaten, and that all should drink of the other, and not that they should be kept to be worshipped, and honoured as God, as the Papists have done heretofore, who also committed Sacrilege, stealing from the people the one part of the Sacrament, to wit, the blessed Cup. Moreover, that the Sacraments be rightly used, it is required, that the end, and cause why the Sacraments were institute, be understood and observed, as well of the Ministers as the Receivers: For if the opinion be changed in the Receiver, the right use ceases, which is most evident by the rejection of the Sacrifice; as also if the Teacher plainly teach false Doctrines, which were odious and abominable before God (albeit they were his own Ordinance) because that wicked men use them to another end than God has ordained: The same affirm we of the Sacraments in the Papistical Kirk; in which we affirm the whole action of the Lord Iesus to be adulterated, as well in the external form, as in the end and opinion. What Christ Iesus did, and commanded to be done, is evident by the Evangelists, and by Saint Paul: What the Priest does at his Altar we need not to rehearse. The end and cause of Christs institution, and why the selfsame should be used, is expressed in these words, *Do ye this in remembrance of me; as oft as ye shall eat of this bread, and drink of this cup, ye shall shew forth*, that is, extol, preach, magnifie and praise the Lords death, *till he come*. But to what end, and in what opinion, the Priests say their Mass, let the words of the same, their own Doctors, and Writings witness: to wit, that they, as Mediators betwixt Christ and his Kirk, do offer unto God the Father, a Sacrifice propitiatory for the sins of the quick and the dead; Which Doctrine as blasphemous to Christ Iesus, and making derogation to the sufficiency of his only sacrifice, once offered for Purgation of all these that shall be sanctified, we utterly abhor, detest, and renounce.

XXIII. To whom Sacraments appertain

WE confess and acknowledg, that Baptism appertains as well to the Infants of the faithful, as unto them that be of age, and discretions; and so we damn the error of the Anabaptists, who deny Baptism to appertain to children, before that they have Faith, and Understanding: but the Supper of the Lord, we confess to appertain to such only as be of the household of Faith, and can try and examine themselves as well in their Faith, as in their duty towards their Neighbours. Such as eat, and drink at that holy Table, without Faith, or being at dissension, and division with their brethren, do eat unworthily. And therefore it is, that in our Kirk, our Ministers take publick, and particular examination of the knowledg, and conversation of such as are to be admitted to the Table of the Lord Iesus.

XXIV. Of the Civil Magistrate.

WE confess and acknowledg, Empires, Kingdoms, Dominions and Cities, to be distincted, and ordained by God: the powers and authority in the same, be it of Emperors in their Empires, of Kings in their Realms, Dukes and Princes in their Dominions, and of other Magistrates in the Cities, to be Gods holy Ordinance, ordained for manifestation of his own Glory, and for the singular profit, and commodity of Mankind: So that whosoever goeth about to take away, or to confound the whole state of Civil Policies, now long established, we affirm the same men, not only to be enemies to mankind, but also wickedly to fight against Gods express will. We farther confess and acknowledg, that such persons as are placed in Authority are to be loved, honoured, feared, and holden in most reverent estimation; because that they are the Lieutenants of God, in whose Sessions God himself does sit and judge: yea, even the Judges and Princes themselves, to whom by God is given the sword, to the praise and defence of good men, and to revenge and punish all open malefactors. Moreover to Kings, Princes, Rulers and Magistrates, we affirm, that chiefly and most principally the conservation and purgation of the Religion appertains; so that not only they are appointed for Civil Policy, but also for maintenance of the true Religion, and for suppressing of Idolatry and Superstition whatsoever, as in David, Iehosaphat, Ezechias, Iosias, and others highly commended for their zeal, in that case, may be espied. And therefore we confess and avow, that such as resist the supreme Power, *doing that thing which appertains to his charge do resist Gods Ordinance*: and therefore cannot be guiltless. And farther we affirm, that whosoever denies unto them their aid, counsel and comfort, *whilst the Princes and Rulers vigilantly travel in execution of their Office*, that the same men deny their help, support, and counsel to God, who by the presence of his Lieutenant does crave it of them.

XXV. Of the gifts, freely given to the Kirk.

Albeit the word of God truly preached, and the Sacraments rightly ministred, and Discipline executed, according to the word of God, be the certain and infallible signs of the true Kirk; we mean not, that every particular person joyned with such company, be an elect member of Christ Iesus: For we acknowledg and confess, that dornel, cockle and chaff, may be sown, grow, and in great abundantly in the midst of the wheat; that is, the Reprobate may be joyned in the society of the Elect, and may externally use with them the benefits of the word and Sacraments: But such bring but temporal professors, in mouth, but not in heart, do fall back, and continue not to the end: And therefore have they no fruit of Christs Death,

Death, Resurrection, nor Ascension: but such as with heart unfeignedly believe, & with mouth boldly confess the Lord Jesus, as before we have said, shall most assuredly receive these gifts. First, In this life, remission of sins, and that by only Faith in Christs blood, in so much, that albeit sin remains, and continually abides in these our mortal bodies, yet it is not imputed unto us, but is remitted, and covered with Christs Justice. Secondly, in the general Judgment there shall be given, to every man, and woman, resurrection of the flesh: for the Sea shall give her dead; the Earth these that therein be inclosed: yea, the Eternal God shall stretch out his hand on the dust, and the dead shall arise incorruptible, and that in the substance of the self-same flesh that every man now bears, to receive according to their works, glory, or punishment: For such as now delight in vanity, cruelty, filthiness, superstition or idolatry, shall be adjudged to the fire unquenchable, in which they shall be tormented for ever, as well in their bodies as in their souls, which now they give to serve the Devil in all abomination. But such as continue in well-doing to the end, boldly professing the Lord Jesus, we constantly believe, that they shall receive glory, honour and immortality, to reign for ever in life everlasting with Christ Jesus, to whose glorified body all his Elect shall be made like, when he shall appear again in Judgment, & shall render up the Kingdom to God his Father, who then shall be, and ever shall remain, in all things, God blessed for ever: To whom, with the Son, and with the Holy Ghost, be all honour and glory now and ever. So be it.

Arise O Lord, and let thine enemies be confounded, let them flee from thy presence that hate thy godly Name. Give thy Servants strength to speak thy Word in boldness; and let all Nations cleave to thy true Knowledge Amen.

Thir Acts, and Articles, were read in the face of Parliament, and ratified by the three Estates, at Edinburgh, the 17. day of August, the year of God 1560. years.

Act 7. 6. P. 1. C. 8. Anno 1567.

Anent the Kings Aith to be given at His Coronation.

Item, Because that the increase of vertue, & suppressing of Idolatrie, craves, that the Prince, and the People be of one perfite Religion, quiblk of Gods mercieus now presently professed, within this Realm: Therefore it is statute, and ordained, be our Sovereign Lord, my Lord Regent, and the three Estates of this present Parliament, that all Kings, and Princes, or Magistrats whatsoever, holding their place, quiblk hereafter in any time shall happen to reigne, and bear rule over this realm, at the time of their Coronation, and receipt of their Princely Authoritie, make their faithfull promise be aith, in presence of the eternal God, that during the baill course of their lives, they shall serve the samin eternall God, to the uttermost of their power, according as he hes required in his maist haly Word reveled and contained in the new, and auld Testaments: And, according to the samin word, shall maintaine the trew Religion of Christ Jesus, the preaching of his haly word, and due and right ministracion of the Sacraments, now received, and preached within this realme. And shall abolish, and gainstand all false Religion, contrarie to the samin: And shall rule the people committed to their charge, according to the will, and command of God, revealed in his foresaid Word, and according to the laudable Lawes, and Constitutions, received in this realme, nawise repugnant to the said Word of the eternal God: And shall procure to the uttermost of their power, to the Kirk of God, and haill Christian people, trew and perfite peace, in all time cumming: The Rights, and rents, with all just Priviledges of the Crown of Scotland, to preserve, and keep inviolated. nouthir shall they transfer, nor alienate the samin: They shall forbid, and represe, in all estates, and degrees, reise, oppression, and all kinde of wrang. In all judgements, they shall command, and procure that justice, and equitie be kept to all creatures, without exception, as the Lord, and father of all mercies be merciful to them. And out of their Lands, and Empyre, they shall be carefull to root out all heretikes, and enemies to the trew worship of God, that shall be convicted be the trew Kirk of God, of the foresaid crimes: And that they shall faithfullie affirm the things above written be their solemn aith.

Act. J. 6. P. 1. C. 9. Anno 1567.

*No person may be judge, Procurator, Notar, nor Member
of Court, quha professis not the Religion.*

ITem, The Kings grace, with advice of my Lord Regent, and the three Estates of this present Parliament, statutes and ordains, That no manner of person, nor persons, be received, in any times hereafter, to bear publick office removabill of judgment, within this Realm, but sik as profess the puritie of Religion and Doctrine, now presently established. And that nane be permitted to procure, nor admitted Notar, or created a Member of Court, in any time coming, without he in likewise profess the Evangel, and Religion foresaid. Providing alwayes, that this Act be on no wise extended to any manner of person, or persons, havand their offices heritable or in life-rent, but that they may use the samin, conforme to their infeftments, and dispositions granted to them thereof.

Which Act was thereafter Anno 1609. explained and extended in this manner.

Part of the Act J. 6. P. 2. C. 5. Anno 1609. intituled &c.

AND that the Act made in His Highness first Parliament, bearing that nane that profess the true Religion, presently professed, within this Realm, may be judge, Procurator or Member of Court, be extended to all and whatsomever offices, without any exception, or restriction, in all time coming.

Act. J. 6. P. 3. C. 47. Anno 1572.

*Adversaries of the true Religion are not Subjects of the
King. Of Apostats.*

ITem, Forsameikle as there hes been great rebellion, and disobedience against our Sovereign Lords authoritie, in time bypast, and seeing the cause of Gods true Religion, and His Highness authoritie foresaid, are so joyned, as the hurt of the one is common to baith. It is therefore declared, statute, and ordained, by our Sovereign Lord, with advice and consent of his Regents grace, with the three Estates, and hail bodie of this present Parliament: That nane shall be repute as loyal, and faithful Subjects to our said Sovereign Lord, or his Authority, but be punishable, as Rebels, and Gainstanders of the samin, quhilk shall not give their confession, and make their profession of the said true Religion: And that all sik as makes profession thereof, and yet hes made defection fra their dew obedience ought to our Sovereign Lord, shall be admonished be the Pastors, and Ministers of the Kirk, to acknowledge their offence, and turn to their dutieful obedience: And, if they failzie therein, to be excommunicat, and secluded from the Society of the Kirk, as rebellious, and corrupt Members, betwixt and the first of Jun: nixt to come; and that alwayes before sik persons as hes made defection be received to our Sovereign Lords mercie, and favour, they shall give the Confession of their Faith, of new, and promise to continue in the Confession of the true Religion, in time coming, and maintaine our Sovereign Lords Authoritie, and that they shall at the utmost of their power, fortifie, assist and maintaine, the true Preachers, and Professors of Christs Religion, against whatsomever enemies, and gainstanders of the same; and namely, against all sik of whatsome-

ver Nation, Estate, or degree they be of, that hes joyned, and bound themselves, or hes assisted, or assist to set forward, and execut the cruel decreits of the Council of Trent, (quhilk most injuriouly is called by the adversaries of Gods Truth, the halie league) contrary the Preachers, and true Professors of the Word of God.

Many other Acts, and these most peremptory, and strict, against the Popish Religion, as Idolatrie, and very pernicious to the Kingdom, might here be added; But these are set down as most apposite to the purpose, and the rest may be seen at length in the printed Acts of Parliament.

Act Ch. 2. P. 2. C. 1. Anno 1669.

*Act asserting His Majesties Supremacy over all Persons,
and in all Causes Ecclesiastick.*

THE Estates of Parliament having seriously considered, how necessary it is, for the good, and peace of Church and State, that His Majesties Power, and Authoritie, in relation to maters, and Persons Ecclesiastick, be more clearly asserted, by an Act of Parliament: Have therefore thought fit it be enacted, asserted, and declared: Likeas, His Majestie, with advice, and consent of his Estates of Parliament, doth hereby enact; assert, and declare, that His Majesty hath the supreme Authority, and Supremacie over all Persons, and in all causes Ecclesiastick within this his Kingdom: And that by vertue thereof, the ordering, and disposal of the external Government, and Policie of the Church, doth properly belong to His Majestie, and his Successors; as ane inherent right of the Crown, and that His Majesty, and his Successors, may settle, enact, and emit such Constitutions, Acts, and Orders, concerning the administration of the external Government of the Church, and the Persons employed in the same, and concerning all Ecclesiastick meetings, and maters, to be proposed, and determined therein, as they, in their Royal Wisdom shall think fit. Which Acts, Orders, and Constitutions, being recorded in the Books of Council, and duellie published, are to be observed, and obeyed by all His Majesties Subjettis, any Law, Act, or Custom, to the contrary, notwithstanding: likeas, His Majesty, with advice, and consent foresaid, doth rescind, and annull all Lawes, Acts, and Clauses thereof, and all Customs and Constitutions, Civil, or Ecclesiastick, which are contrary to, or inconsistent with His Majesties Supremacy, as it is hereby asserted, and declares the same void, and null, in all time coming.

*The Bishop of Aberdeen, and the Synods
Explanation of the Test.*

- I. **W**E do not hereby swear to all the particular Assertions and Expressions of the Confession of Faith, mentioned in the Test, but only to the uniform Doctrine of the Reformed Churches contained therein.
- II. We do not hereby prejudg the Church's Right to, and Power of making any alteration in the said Confession, as to the ambiguity and obscure expressions thereof, or of making a more unexceptionable frame.
- III. When we swear, That the King is Supreme Governour over all Persons, and in all Causes, as well Ecclesiastick as Civil: and when we swear to assert and defend all His Majesties Rights and Prerogatives; this is reserving always the *intrinsic, unalterable power of the Church*, immediately derived from Jesus Christ, to wit the power of the Keys, consisting in the preaching of the Word, administration of the Sacraments, ordaining of Pastors, exercise of Discipline, and the holding of such Assemblies as are necessary for preservation of Peace and Unity, Truth and Purity in the Church: and withal we do not hereby think, that the King has a power to alter the Government of the Church at his pleasure.

IV. When we swear, That it is unlawful for subjects to meet or convene, to treat or consult, &c. about matters of State, Civil, and Ecclesiastick; this is excepting meetings for Ordination, publick Worship and Discipline, and such meetings as are necessary for the conservation of the Church and true Protestant Religion.

V. When we swear, there lyes no obligation on us, &c. to endeavour any change or alteration in Government, either in Church or State, *we mean by Arms, or any seditionous way.*

VI. When we swear, That we take the *Test* in the plain and genuine sense of the words, &c. *we understand it only in so far as it does not contradict these Exceptions.*

The Explanation of the Test, by the Synode and Clergy of Perth.

BEcause our Consciences require the publishing and declaring of that express meaning we have in taking the *Test*, that we be not mis-interpreted to swear it in these glosses which men uncharitable to it, and enemies to us, are apt to put upon it: and because some men, ill affected to the Government, who are daily broachers of odious and calumnious slanders against our Persons and Ministry, are apt to deduce inferences and conclusions from the *alleged ambiguity of some Propositions of the Test*, that we charitably and firmly do believe were never intended by the Imposers, nor received by the Takers: Therefore to satisfie our Consciences, and to save our Credit from these unjust imputations, we expressly declare, That we swear the *Test* in this following meaning.

I. By taking the *Test*, we do not swear to every Proposition and Clause contained in the *Confession of Faith*, but only to the true Protestant Religion, founded upon the Word of God, contained in that *Confession*, as it is opposed to Popery and Fanaticism.

II. By swearing the Ecclesiastick Supremacy, we swear it as we have done formerly, without any reference to the assertory Act: we also reserve intire unto the Church its own intrinseck and unalterable power of the Keys, as it was exercised by the Apostles, and the pure primitive Church, for the first three Centuries.

III. By swearing, That it is unlawful to convocate, convene or assemble in any Councils, Conventions or Assemblies, to treat, consult, &c. in any matter of State, Civil or Ecclesiastick, as we do not evacuate our natural liberty, whereby we are in freedom, innocently without reflection upon, or derogation to Authority, or persons intrusted with it, to discourse in any occasional meeting of these things; so we exclude not those other meetings which are necessary for the well-being and Discipline of the Church.

IV. By our swearing it unlawful to endeavour any change or alteration in the Government, either of Church or State, we mean, that it is unlawful for us to endeavour the alteration of the specifick Government of Monarchy in the true and lineal Descent, and Episcopacy.

V. When we swear in the genuine and literal sense, &c. we understand it so far as it is not opposite or contradictory to the foresaid exceptions.

They were allowed to insert after the Oath, before their Subscriptions, these words, or to this purpose.

We Under-written do take this Oath according to the Explanation made by the Council, approved by His Majesties Letter: and we declare, we are no further bound by this Oath.

*A Paraphrase on the Test emitted by one of the
conformed Clergy.*

I *A. B.* solemnly swear, in presence of the Eternal God, whom I invoke as judge, and witness of my sincere intention of this my Oath That I *A. B.* being fully assured, without the least doubt or hesitation of the truth of all that I am now to assert, and of the lawfulness of all that I am now to promise; Do in the most solemn manner, swear in the sight, and presence of the Eternal God, whom I here call upon to witness against me in the Great Day, and to pass Sentence of Condemnation upon me, if I affirm any thing, by this my Oath, of the certainty whereof I am not fully assured, or promise any thing of the lawfulness whereof I have any scruples, and which I am not sincerely resolved to perform, *viz.*

That I own, and sincerely profess the true Protestant Religion, contained in the *Confession of Faith* recorded in the first Parliament of *James* the VI &c. That I cordially own, & without any dissimulation, profess the true Protestant Religion: And because there are many doctrines, and opinions that pass under that name, that it may be known what I do mean by the true Protestant Religion, I declare, That I own that *Confession of Faith*, which is recorded in the first Parliament of King *James* the VI. as the true test, and standard thereof: And that I believe the same to be founded on, and agreeable to the written Word of God. And because it would not be a just standard, if some part of it were taken, and others left, unless these parts, that are to be sworn to, were expressly condescended on by the same Authority whereby it is imposed: For if it were left arbitrary, for every one to pitch on these parts of it he pleases, as the measure of his Faith, it would be useless for the end for which it is adduced: Therefore I embrace the whole *Confession*, and do swear by the same solemn Oath, That I believe every Article, and every Proposition therein to be true, as being evidently founded on, and agreeable to the Word of God. As for instance, *Art. 3.* I swear by this my solemn Oath, That *Adam's Transgression* is commonly called *Original Sin*. And *Art. 12.* That men have as little hand in their *Regeneration and Sanctification*, as they have in their *Creation and Redemption*. And *Art. 14.* That to suppress *Tyranny*, is one of the good works of the *Second Table*, most pleasing, and acceptable to God, and commanded by himself; the contrary whereof is a sin most odious, which always displeaseth, and provokes him to anger: that is, When the Civil Magistrate comes to act arbitrarily, and against Law, when he invades the established Religion, the Priviledges of Parliament, or the Liberties, and Properties of Subjects, he is to be opposed and resisted. Or when our Ecclesiastical Superiors usurp a Dominion over the Inferior Clergy, or behave themselves as Lords over Gods Heritage, or require absolute obedience to their Dictates, and Determinations, they are to be withstood, and born down. And as it is in the same Article, I swear, That I believe, our resistance of these whom God hath placed in Authority over us, is a sin, when they do not pass over the bounds of their Office, but if they pass over these bounds, it is a duty to resist them; which is evident, being compared with the former Proposition, and the practices of them who composed the *Confession*. And in the same Article I swear, and believe all these to be evil works in matters of Religion, and the worship of God, which have no other assurance but the invention, and opinion of men. So that whatsoever our Superiors determine in this matter, tho only for Decency, if they cannot shew it to be clearly founded on the Word of God, it is to be looked on as an evil work; And I swear, I shall so reckon it. *Art. 16.* I swear, That I think it blasphemy to affirm, that men who live according to natural light, and moral equity, shall be saved; unless they profess the Christian Religion: And that out of the true Church there is neither life, nor eternal felicity. So that I not only condemn all Pagans and Papists to Hell fire, but I declare upon Oath, That I think it Blasphemy to affirm the contrary. And *Art. 18.* I believe, That Ecclesiastical Discipline, rightly administered, as Gods Word prescribeth, is as essential a note of the true Church, as the right administration of the Word, and Sacraments; So that the Church of England, or any other Church, that has not Discipline rightly administered, tho they have the Word, and Sacraments pure, and uncorrupted, wants an essential

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Note of a true Church. And Art. 21. I declare, That I perfectly understand this Proposition, and do solemnly swear, that it's true, that the faithful, in the right use of the Lords Table, are so made flesh of his flesh, and bone of his bone, that as the eternal Godhead has given to the flesh of Jesus Christ (which of its own condition and nature, was mortal, and corruptible) Life, and Immortality, so does Christ Jesus his flesh, and blood, eaten and drunken by us, give unto us the same Prerogatives. And Art. 22 I declare, and swear by this my solemn Oath, That the Ministers of the Church of Rome are not Ministers of Jesus Christ, and that they have no true Sacraments; So that our first Reformers having both their Baptism, and Ordination from them, we have neither among us truly baptized persons, nor rightly ordained Ministers. And Art. 24 I believe, That the resisting the Supreme Power doing that which appertains to his charge, is to resist the Ordinance of God. So that to resist, when he goes beyond his charge, is not to resist the Ordinance of God, but to repress Tyranny, according to Art. 14.

And I promise, and swear, That I shall adhere thereto, during all the days of my life, & shall endeavour to educate my children therein, & shall never consent to any change contrary thereto: And that I disown all such Doctrines, whether Popish or Fanatical, which are contrary to & inconsistent with the true Protestant Religion, & this Confession of Faith. All these Propositions, and every thing contained therein, I firmly believe, and embrace, and I promise, and swear, that I shall adhere to them, so long as I live, without ever changing my opinion about them, and that I shall carefully educate my children according to them; i. e. I shall teach them to repress Tyranny, and if the Authority should make any alteration in the said Confession, or any of the Propositions therein, I swear, that I shall never consent thereto: And I swear also, That I shall renounce all Principles, Doctrines and Practices, whether Popish or Fanatical which are contrary to any Article, or proposition of the foresaid Confession of Faith.

And for testification of my obedience to my most Gracious Sovereign, Charles the Second, I do affirm, and swear, by this my solemn Oath, That the Kings Majesty is the only Supreme Governour over this Realm, over all Persons, and Causes, as well Ecclesiastick, as Civil; and that no Foreign Prince, &c. As I have declared my Faith toward God, so now to testify, that I am a good Subject to the King, I affirm, and swear by this my solemn Oath, That the Kings Majesty is the only Supreme Governour over all Persons, not only Civil, but also Ecclesiastical: By which I understand that Ecclesiastical Supremacy which the Parliament by Act, Nov. 1669. has declared to belong to him, as an inherent Right of the Crown: By vertue whereof, His Majesty, and Successors, may dispose of the external Government, and Policy of the Church, as they please; i. e. of all Church-Government, there being no other Government exercised in the Church by men, but that which is external: And that they may settle, enact, and emit any Constitutions, Acts or Orders, concerning the Government, or persons employed therein, and concerning all Ecclesiastical meetings, and matters to be proposed, and determined therein, as they shall think fit: So that I affirm, that His Majesty, and Successors, may alter, change, or abolish the form of Church-Government, now established by Law: that he may commit it into the hands of persons of a different Religion, from what is presently professed in this Realm: that he may discharge all meetings of Synods, Presbyteries, and Sessions for ever: Or if he shall please to continue them, that he may chuse one delegated, or deputed by himself, to propose, and determine all matters therein, as he thinks fit: That he may by vertue of his Supreme Power, inhibit Church-Officers to meet, or meddle in any matter, either Doctrine, or Discipline, without his special Order: to pursue, or process any Delinquent, or to consider of means to prevent any change, or alteration in Religion, tho it should be in never so great hazard, except only as he shall determine, and appoint therein: All which he may do by himself, and his Council without any new Law, or Act of Parliament: And I affirm, & swear, that tho any of His Majesties Successors shall happen to be of another Religion (as God forbid,) yet all this Ecclesiastical Power does belong to him, it being declared to be an inherent Right in the Crown, and so not to belong to him as a Christian, or Protestant Magistrate, but as a Magistrate precisely. And to my power I shall defend all Rights, Jurisdictions, Prerogatives, Priviledges, Preheminencies belonging to His Majesty, and

lawful Successors. And also I swear by this my solemn Oath, that so far as I am able, I shall assist, and defend His Majesties Rights, and Prerogatives, which because I do not know, therefore whatsoever the King, and Parliament, or King, and Council, shall declare to belong to him, as a Right, Jurisdiction, and Prerogative, either in Civil or Ecclesiastical Affairs, either concerning Religion, Liberty, or Property, by Ecclesiastical Supremacy, I swear, I shall own, and approve, assist, and defend the same, as far as possibly I can.

And further I affirm, and swear by this my solemn Oath, That I judge it unlawful for Subjects, upon pretext of Reformation, or any other pretence whatsoever, to enter into Covenants, or Leagues, or to convocate, convene, or assemble in any Council, Convocation, or Assembly, to treat, consult or determine in any matter of State, Civil, or Ecclesiastick, without His Majesties special Licence, or express Warrant had thereto; or to take up Arms against the King, or those commissioned by him: And that I shall never so rise in Arms, nor enter into such Covenants or Assemblies, &c. And I further swear, That I think it utterly unlawful for any Subject, of whatsoever quality, or condition, many or few, for whatsoever Cause, not only to make any Covenants, but not so much as to meet together in any kind of Meeting, to hear, see, or consult about any matter belonging to the Civil, or Ecclesiastical Estate, without His Majesties special Command, and express Licence: So that whatsoever corruption, or abuse may be in the Civil Government, through the fault of the King, or Council; or whatsoever hazard or danger the true Religion, and Church of God, within this land, may be in, I judge it unlawful for any Subject, whether Pastors, or others, to meet together, that they may consider what way to remedy, or prevent the same; tho it were only by humble Addresses, and Petitions: And I swear, That there can never fall out a Case wherein Subjects may rise in Arms against their King, or any Commissioned by him, even though it were merely to defend themselves, tho never so cruelly persecuted, and invaded by any who pretend his Name, and Authority: And I promise and swear, That if any shall rise in Arms or meet together, in a peaceable way, for the ends foresaid, that I shall never joyn with them. And that there lies no Obligation on me from the National Covenant, or the Solemn League and Covenant, so commonly called, or any manner of way whatsoever, to endeavour any change, or alteration in the Government, either in Church, or State, as it is now established by the Laws of this Kingdom, &c. And I also affirm, and swear by this Oath, That there lies no Obligation on me, either by the National, or Solemn League and Covenant, or any other way imaginable whatsoever, to endeavour the least change, or alteration in the Government, either in Church, or State, as they are now established: So that I am never to endeavour any alteration, not only in the Civil Government, but also in the Govern. of the Church, as it is now established among us, though it should be found never so prejudicial to Religion, to His Majesties Service, or to the good of the Countrey. Yea, whatever corruptions may come to be in either of the Govern. I swear, That I am obliged never to endeavour the least alteration of them. And particularly, 1. As to the Ecclesiastical Govern. it being established by the Civil Magistrate, I am never to endeavour that it may be settled by the consent of the Church. 2. The Bishops, by the Act of Restitution, Art. 1. *Ses. 2. Par. 1. Char. 2.* being allowed to inflict Censures, and to exercise all other Discipline, only with advice, and consent of such of the Clergy, as shall be found to be of known loyalty and prudence: yet tho they should utterly neglect Synods, and Presbyteries, and call only such Ministers as they please, tho it were but Two, or Three; and let them make Canons concerning Doctrine, and Worship, suspend, and depose Ministers, inflict the highest Censures, either upon Church-men, or Laicks, I am not to endeavour an alteration of these things. 3. There being no Obligation on them by that Law which gives them their Legal Establishment, either to reside in their Diocesses, or to visit their Churches, or to hold but one Benefice, I am to use no endeavour that this may be helped. 4. They being by the same Act only accountable to His Majesty, I am not to endeavour that they may be accountable to the Church, tho they be convicted in a National Synod, for any of their Administrations. 5. Whereas by the Act establishing a National Synod, Act 4. *Ses. 2. Par. 1. Char. 2.* the Moderators of every Presbytery, who are nominated to that Office by the Bishop, are appointed to be of the

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Commissioners, for the National Synod, and the Moderators, declared to have a Negative Voice for the chusing of the other Commissioners: And so the whole Assembly is nominated by the Bishops. And it being further enacted, That nothing is to be debated and considered in the said Assembly, but as it is proposed by His Majesty, and Successors: And that the Archbishop of St. Andrews, as President of the Assembly, is declared to have a Negative Voice, not only in the whole Synod, but even on His Majesty himself: So that whatever should be agreed on by all the rest of the Bishops, and Clergy, His Majesty consenting thereto, yet it cannot be concluded, and emitted, without consent of the President: Yet I am to affirm, and swear, That I am not to endeavour the alteration of any of these things: And that there lies no Obligation on me, either from respect to Religion, or duty to my Prince, and Native Country, or any regard to Episcopacy, or any other manner of way whatsoever, to endeavour the least change of any of these fore-mentioned.

And I promise and swear, That I shall from henceforth, with my utmost power, defend, assist, and maintain His Majesties Jurisdiction foresaid, against all deadly, &c. And I shall never decline His Majesties Jurisdiction, as I shall answer to God, &c. And finally, I affirm and swear by this, &c. That I shall not only submit unto, but that I shall own, and approve His Majesties Jurisdiction; i. e. all his Rights, and Prerogatives, especially his Ecclesiastical Supremacy: Yea, that I shall with my utmost power, both of body, and mind, defend, and maintain the same, against all creatures whatsoever: And tho His Majesty should by himself, or any Laick deputed by him, inflict a Church-censure, or an Excommunication it self, yet I shall never decline this his Power and Jurisdiction, as I shall answer to God, at the great day.

And finally, I affirm and swear, That this my solemn Oath is given in the plain genuine meaning of the words, without any equivocation, mental reservation, or any manner of evasion whatsoever, and that I shall not accept, or use any dispensation from any creature whatsoever. *So help me God, &c.* And lastly, I affirm and swear, That I have sworn all these things, in the plain sense and meaning of the words, not only without equivocation, or mental reservation, but without any manner of evasion whatsoever, So that I renounce all senses, and glosses, and explications whatsoever, which seem any way disagreeable to the plain sense of the words of this Oath, as they are commonly understood by men. And that as I shall not accept, or use any dispensation from any creature whatsoever, so I shall never make use, or rely upon such glosses, as explications to help me out, or set me free from Perjury. Wherefore being fully perswaded of the truth, and lawfulness of all that I have now sworn, and as sincerely resolved to perform it, in every Article thereof, I do confidently pray to God to help me to this Grace to do so: and I wish he may make me so speed, here and hereafter, as I am perswaded and resolved.

1. An Oath being considered by all men who have any sense of a Deity, as a most Sacred Bond, and of the strictest Obligation; It's to be presumed, that no man who truly fears God, will rashly adventure on it: For if I affirm any thing upon Oath, of the truth whereof I am not certain; or if I promise any thing, of the justice, or lawfulness whereof I have any doubt, or which I am not fully resolved to perform, I make my self guilty of Perjury; which even the most barbarous Nations have ever looked on as the foulest of Crimes; For it's both the greatest affront that can be put on God, in calling him to be Judge, and Witness to a Lye; and one of the greatest injuries that can be done to men, in overthrowing the best security, and chiefest ground of trust that they have: It were therefore to be wished, that Oaths were never imposed, except in cases of absolute necessity: For it is certain, that the most part of men being acted more by interest than by conscience, will be too easily perswaded to swallow them, that they may shun a present inconveniency, whatever danger or damage it may import to them in the Life to come: And it has been always observed, that these who have been most forward to take Oaths, are most forward to break them.

2. But all who truly fear the Lord, who prefer the peace of their Conscience to their worldly interest, and who look more to the things that are not seen, than to the things that are seen, will think themselves obliged to advise well before they adventure on an Oath, that if they swear at all, they may do it as the Lord himself requires *Jer. 4, 2.* in truth, in judgment, and in righteousness; i. e. that they know what they affirm to be

true,

true, and what they promise to be just, and righteous; and that in neither of these they be rash or inconsiderate, but have their judgments truly informed, and sufficiently instructed in both: If a man be uncertain or doubtful in any of these, he is by no means to adventure on an Oath, but rather to suffer the loss of all things than to take it.

3. Now if an Oath containing one single Proposition, and contrived in the plainest, and easiest terms, ought to be diligently weighed, and pondered before it can be taken, how much more such an Oath as this, which consists of so many different, and various matters: Some of which are not only doubtful, and uncertain in themselves (to say no worse) but in the judgment of wise, and sober men inconsistent one with another.

4. It's granted by all, that this Oath cannot be taken, without several glosses, and explications. And these which are commonly offered, cannot be admitted for divers Reasons. 1. Because they seem to overthrow the genuine sense, and meaning of the Oath. 2. Because in the Oath, we swear, That we take it in the plain genuine sense, and meaning of the words, without any equivocation, mental reservation, or evasion whatsoever: So that altho these glosses should be conceived in the plainest terms, and we suffered to write them down under our hands; and so cannot come under the notion of equivocation or mental reservation; yet that cannot but be considered as evasions, it being only by the help of them that we pretend to escape the fearful crime of perjury. 3. There is no Authority that can give us Explications, but the same who has imposed the Oath, that is the King, and Parliament. For tho the King, and Lords of Council, and Session, be considered as Interpreters and Explainers of the Laws, yet that is only in matters of Right, or Wrong, to which men ought to submit: But it's another thing in matter of an Oath: For that is always to be taken only in the sense of the Imposers: And we being required not to submit to it but to swear to it, no Explication given by any other, but by him, or them who gives us the Oath, can secure or quiet our Consciences. 4. These Explications, tho given by the same Authority who imposed the Oath, seem both useless, and unsafe, unless published, and recorded as the Oath itself; otherways the Explication will soon be forgotten; whereas the Oath stands still as it was.

5. It must be also considered, that tho men take this *Test*, it seems it will not secure them in their places: For why may not the same alterations be made in the Church which are made in the State, the Supreme Power, and Prerogative being alike over both? And tho this Argument will be of small force unto some, yet it may have its own weight unto others.

6. If it be said, That divers Articles, and Parts of the *Test*, are asserted, and enacted by former Laws, as partly, that against meeting, convening, or Assembling to treat, consult, &c. which is in the very same terms discharged and forbidden, not only by *Act. 4. Sess. 1. Par. 1. Char. 2.* but also by an old Law, *Act. 31. Par. 8. James 6.* It is answered, That there is this considerable difference therein in those Acts, viz. that the ordinary judgments are excepted: And it is not without reason, that this clause is left out here, and it is one thing to submit to a Law, another to swear it.

7. But some may say, that we have already sworn the Oath of Supremacy; to which they who took it before the year 1669. had little, or no ground of scruple, but by the Act assertory, the Supremacy being declared to be quite another thing than ever it was understood before, there are many conscientious men, and the best friends to Episcopacy, who cannot take that Oath now, though that alone should be made the *Test*: As for others of the Clergy who have taken it since that Act of Parliament, they were told by the Bishop that administered it to them, that the Assertory Act had no relation to the Oath; and therefore they gave it them only in the old sense, whereby they were perswaded to take it: But now the matter is put beyond all doubt: For the Kings Ecclesiastical Supremacy, as it is explained in the Act, being declared to be an inherent Right of the Crown; and we swearing in the *Test*, to maintain, and defend all His Majesties Rights and Prerogatives, we do clearly swear to own and maintain the Supremacy, as it is there asserted and declared.

8. But

8. But we are told, we should not oppose our sentiments to the wisdom of the Nation: And if the meaning of this be, that we ought to reverence our Superiours, submit to their Laws, and live peaceably under their Government, it is willingly granted: But if the meaning of the *Test* be, that we are to believe whatsoever they say, blindly swear whatever they bid us, this is to erect an infallible chair in the State, in the stead of the Church, which is a new unheard of piece of Popery.

But if we stand out, and refuse the *Test*, how shall the Credit and Honour of Authority be saved? It were to be wished it did consult its own Credit more, before the making of any Laws, and Edicts; for there cannot be too great deliberation used, in enacting such things as are to oblige the whole Nation at present, and their Posterity for the time to come: And much more heed ought to be had in appointing an Oath to be sworn by the most considerable part thereof. If our Ecclesiastik Superiours had been so kind, and just to themselves, and their Clergy, as to have consulted the wisest of their Presbyters within the Kingdom, it's like it might have prevented much of this inconvenience: But now that it's done, all who can take this Oath with a clear Conscience let them take it, and much good may it do them: But as for these who cannot take it, let them suffer patiently the penalty inflicted by the Law; and let them behave themselves orderly, and peaceably, without making any rent in the State, or Schism in the Church, and without reflecting on their Governours: Yea, that it may be seen by all men they are acted by Principles of Conscience: And this seems to be the best way that is now left for saving the Credit of Authority: And yet many wise men think, that it would be no reflection on Authority, if His Majesty, out of his Goodness, finding how great a Grievance the urging of the *Test* is like to prove to his best and most loyal Subjects, which could not be so well known till it was tried, should suspend the Execution of the Law till further advice.

It obligeth us to swear, That we believe the *Confession* recorded in the 1. *Par. James 6.* is founded on, and agreeable to the written Word of God: Now if there be but one single proposition in that *Confession*, either false, or dubious, not exprest in, or clearly deduced from the Scriptures, can we swear it with a good Conscience? Surely whoever reads it with understanding, will find many things doubtful, and uncertain at least. But it deserves to be particularly remarked, that it contains Doctrines which manifestly cross the many ends of the *Test*: This was certainly designed to guard and engage men against Fanatical principles, and yet for all that, it obliges all that swear it to own the most capital, and fundamental principles of those who are called Fanatics. They maintain, that our obedience to the supreme Magistrate is to be limited; and that if he be an enemy to the Truth, and Cause of God, Subjects may take up Arms against him. 2. They maintain, That nothing is to be allowed in the worship of God, but what is prescribed in his Word: Were not these the Principles that embroiled these Kingdoms, that raised a Combustion, and that turned all things upside down, both in Church and State? And are not these Principles plainly taught in this *Confession*? It is reckoned, *Art. 15. a duty to repress Tyranny; and to disobey, and resist Kings, is a sin, with this caution and limitation (while they pass not over the bounds of their Office, or do that thing which appertains to their charge.)* And in like manner, the assistance we owe them is cautioned, and limited, [while they vigilantly travel in the execution of their Office]. Is not this the very Doctrine of the Solemn League and Covenant by which they bind themselves to defend the Kings Majesty's Person and Authority, in the preservation, and defence of the true Religion, and Liberties of the Kingdom? Let any but read *Spotswood's History of the Reformation, Anno 1558, 1559, 1560.* among others; how Subjects did bind themselves by Oaths, and Subscriptions, to assist one another for advancing the Cause of Religion; how by the advice of the Ministers, they deprived the Queen Regent of her Government and this very year this *Confession* was compiled, and ratified in Parliament. And I am sure there can remain no doubt about the sense of the *Confession* in this point. But to render the matter beyond exception, It is declared rebellious, and treasonable by Act of Parliament, for Subjects to put limitations on their due obedience, and allegiance. And for the other Principles about Divine Worship, the *Confession* affirms these to be evil works, that in matters of Religion, and Worship of God, have no other assurance, but the invention, and opinion men. In this

principle they condemn very Ancient and laudable Customs of Churches, as singing the Doxology, and the most innocent, and indifferent Ceremonies for decency, and helps for Devotion, calling them by the odious titles of Superstition, and Will-worship. But be these Principles true or false in themselves certainly they are utterly inconsistent with these other clauses in the *Test*, that assert it unlawful, on any pretence whatsoever, to take Arms against the King, and invest him with such a Supremacy as impowers him to erect such Constitutions, and orders about Ecclesiastical matters, as His Majesty thinks fit. And in this also there is a palpable Contradiction, that the *Test* binds us not to consent to any change contrary to the *Confession*, and by and by enjoins to swear what is flatly contradictory to it: We cannot take this *Test*, unless with the same breath we swear, and forswear, under Oath protest one thing, and forthwith under Oath protest the quite contrary.

It obliges us to swear, we shall with our utmost power, defend, assist, and maintain all the Kings Rights. And is not this to swear we know not what? or is it not to swear, we shall maintain, and defend, with the greatest zeal and concernedness, whatsoever the King challenges, or the Parliament votes to belong to him? And may not a Prince come to claim a Right to act Arbitrarily? and may not iniquity happen to be established by Law? Nay, doth not the King, *de facto*, challenge, and has not the Parliament declared Supremacy to be an inherent Right of the Crown; by which His Majesty may settle and emit such Acts and Orders as he pleases, about Ecclesiastical matters? And are not Articles of Faith Ecclesiastical matters? And what is this, but to avow, we hold our selves obliged to believe as the King believes? And so ere long the Rights, Jurisdictions, Prerogatives, Privileges, Preeminences and Authorities that may be voted to belong to our Prince, may come to swallow up Religion, Liberty, Property, and all our Privileges. We do not see how any man of Sense, and Conscience, can swear this clause, in so great a Latitude, and so illimited Terms.

It obliges us to swear That we acknowledg it unlawful, without the Kings special Command, to convocate, convene or assemble in any Council, Convention, or Assembly, to treat, consult, or determine, in any matter of State, Civil, or Ecclesiastik. The clause (excepting ordinary judgments) which was added in all such convocating, convening, and assembling, which were declared unlawful, Anno 1661. 1. Par. Chap. 2. Art. 21. being left out here, we have reason to think, that all such Sessions, Presbyteries, and Synods are discharged, there being no special Command, or Express for them that we know of: And these meetings being of great use, for curbing of Vice, and Prophanesse, and for settling, and entertaining Peace, and good Order in the Church, we cannot swear to forbear holding of them, tho we have not an express License from the King. We acknowledg Princes have Power, and Authority, to inhibit their Subjects to meet as they see cause, but we cannot bind our selves to obey them, against such liberty which Christ hath conferred on his Church: This is a Priviledg the Church ever enjoyed, since it was founded, and erected by our Saviour, and, in all Ages, used as the state of affairs required; So we cannot devoid our selves of it, without proving betrayers of our Trust, and condemning the conduct of the Primitive Christians, who without special command, nay, contrary to the express Edict of Princes, did convocate, convene or assemble in Councils, and Conventions, to treat, consult, and determine about Ecclesiastical matters; and yet for all that, have been no less commended, and admired for loyalty, and peaceableness, than for piety, and zeal. And seeing that in the present juncture its notour that there are Cabals, and Engines formed, and carried on, to undermine the Protestant Religion, and to bereave us of the Truth which our Lord has committed to us as so many Depositories, Can we, without the most horrid guilt, and the blackest infamy, swear, That we shall not so much as meet Two or Three of us together, till we have the Kings Warrant, (perhaps never) to consult about the Welfare of the Church, and the Salvation of our own, and other Mens Souls?

It obliges us to swear there is no obligation on us, any manner of way whatsoever, to endeavour any change, or alteration in the Government, either in Church, or State. Is not this to swear what no man living can assuredly know? And are there not indeed many ties on us as Men, as Christians, as Pastors, to procure, as far as in us lyes, the happiness of the Church, and State? Now if we discern, and it beacknow-
ledged

ledged by wife; and good men, that the Government may be bettered by enacting wholesome new Laws, and abrogating corrupt old ones, might we not, ought we not, in our stations endeavour such an alteration? The Constitution of a National Synod, e. g. gives the Archbishop of St. Andrew's a Negative, when the whole Clergy is contrary, so that were all our Bishops, and other Members of the Synod, men of Apostolick sanctity, and zeal, yet nothing could be done for reforming the Church, if one man, who may happen to be an enemy both to Truth, and Vertue, shall dissent. And how can honest conscientious Church-men swear, they shall never endeavour to have this helped? By the same Act, no matter is to be debated, consulted, or concluded, but what shall be allowed by His Majesty: What now if the Prince come to be Popish, or altogether unconcerned about Religion, shall we, can we, in Conscience, bind our selves to propose, treat, and conclude nothing but what he pleases?

By the explicatory Act, it is put in the Kings power to cut, and carve in the external Government of the Church, at his pleasure: And so he may without consent of Parliament, or Clergy, restore Presbytery; he may turn out all the Bishops, and Pastors, and plant in their room men of his own persuasion, whatever it be, he may casheer all our spiritual Fathers, and substitute Noble-men, Gentle-men, Lawyers, or any other kind of Laiks, to be Superintendents of the Church, or his Commissioners in Ecclesiastical affairs: And shall we oblige our selves by an Oath, to endeavour no rectification of so unreasonable a Statute? If we see, and it cannot be denied, that Episcopal Government might contribute more to maintain Truth, and advance Piety, and Peace, than hitherto it has done, might we not, ought we not to use our utmost endeavours, to procure such Laws, and Canons to be enacted as should oblige Bishops to manage their Power, and Authority to such noble, and excellent ends, and not put off the respect to the souls committed to their charge? We are to endeavour such a change, which might conduce mightily for changing and reforming them: Out of the veneration we bear to Episcopacy we cannot but pray, and wish for such a change, and do our best to effectuate it, because otherways Episcopal Government would come to be despised; and derided, not only as useless, but pernicious: Unless then we would intirely abandon Episcopacy, unless we would express no regard for, or concern our selves with the flourishing of piety, unless we would sit down contented, and satisfied, without ever complaining of, and opposing the corruptions of the Church, we can by no means swear this Clause of the *Test*: But we would with a very good Conscience testify by our Solemn Oath, if we were put to it, that we judge our selves obliged to endeavour a change, both of the Government, and Governors of the Church.

There are several other things that beget in our minds an utter dislike of the Act anent Religion: We shall touch Two or Three things more. It commands us to become a kind of Sycophants, Delators and Informers against Dissenters: Hardly could our mortal enemies fall upon a course more likely to blast our Ministry, and-expose us to hatred and obloquy. Had it been designed we should give an account of Schismatical Withdrawers, that our spiritual Fathers might bear with them in the spirit of meekness, and charity, for clearing their prejudices, we would have most readily, and joyfully served them in so worthy an enterprise: But to delate them, that they may be fined, and imprisoned, or banished, or sustain any bodily, or temporal damages, is a thing we abhor: We judge it more eligible to be no Pastors than to be on such terms.

2. It weakens the Protestant Interest, by dividing Protestants, and treating sober Dissenters with as great severity as Papists, or wildest Fanatiks.

3. It leaves a wide postern for Popery, for it exempts from the *Test* such as should have been first of all put to it, and so provides most effectually for perpetuating Popery in the Royal Family: And what could have been contrived more grateful, and advantageous to the Church of Rome, and what more grievous and fatal to the Reformed?

*Grounds whereupon some of the Conformed Ministers
scruple to take the Test.*

First, passing by the danger of Oaths, when pressed so generally, (men of the least tenderness ordinarily swallow them easily and make small Conscience of observing them, while they that fear Oaths are hardly induced to take them, and by their strict observance make themselves a Prey) we think it strange that this Oath should be enjoined to us, who cannot be suspected rationally to incline either to Fanaticism or Popery, since by our Subscriptions to the Oath of Supremacy, and canonical obedience, we have sufficiently purged our selves of the first, and by our refuting Popish errors daily in our Pulpits, do shew an utter abhorrence of the other, and further, since merely our owning of Episcopal Government has begot, and still increases in the minds of our People, such an Aversion from and dislike of us, we would have expected that our spiritual Fathers would not have exposed us to greater loathing, and contempt, by such engagements; which although it should be granted to be causeless and unjust, yet we think our selves bound to thun it, that our Ministry may be the more taking with them, since the thing pressed upon us, is neither absolutely necessarie, nor yet so evident in what is asserted for truth as may encourage us for to underlie their prejudice conceived thereupon: And finallie, since it is known that abjuring the Covenant did hinder many Ministers to conform, and People to joyn in Ordinances dispensed by Conformists, and our Parliaments had hitherto shewed such civil Moderation as to free us from the Declaration, we cannot look at it but as bad and fatal that our Church should be dashed on this Rock, which may occasion its splitting, and instead of quenching this former evil create new Flames.

Secondly, as we wish for the suppressing of the growth of Popery a more particular way had been made use of, even for the discovering of such as are of no publick Trust, so we cannot but regret that this *Test* has been so framed as to divide the sound sober Presbyterians amongst themselves, whereby our Common Enemies are gratify'd, and the true Faith endangered, we being perswaded that there are many Presbyterians in the Kingdom, Gentlemen, Ministers, and others, who cannot in conscience take this *Test*, who yet do dayly come, and are ready to joine with us in Ordinances. We think it had been fitter to have condescended something for gaining of such, then to have put such a brand upon them, which may more alienate them, and weaken us.

Thirdly, that *Confession of Faith* Recorded in the first Parliament of King James the 6th, has some things in it which may scarre the Swearing to it without Limitation, as 1. Section 15th. it Asserts those to be evil works which are done not only *contra*, but *præter verbum Dei*. 2dly. Section 25th. It Asserts, such as resist the Supreme Power, doing that which pertains to his charge, and while he vigilantly travels in his office, doe resist the Ordinance of God, which clauses may bear an exclusive sense, especially when in the 5th Section, it is reckoned among good works to suppress Tyranny, 3dly Section 15th, Jesus Christ is asserted to be the only Head, and Law-giver of his Kirk, and it is counted Blasphemy for Angels, or Men to intrude themselves into the said Honor, and Office; 4th Section the 23rd on the Sacraments. Popish Baptism is denied as to its validity, and Popish Priests denied to be true Ministers, which expressions if narrowly scanned, will be found of dangerous consequence, and contradictory to other positions in the *Confession* it self.

Fourthly, we fear that our People may look on us rather as Countenancers and Encouragers, then Suppressors of Popery, seeing by the Act we are obliged to delate yearly in October such as withdraw from our Ministry, that they may be punished by the civil Magistrats, and yet by the same Act, the Kings lawful Brother, and Sons in *perpetuum* are exempt from taking the *Test*, and consequently left at liberty to be Papists, or Protestants, and what bad influence their example may have on inferior People may easily be apprehended, and our taking the *Test* will be reputed an approving of that exemption, which will be more stumbling. That all former Acts against Papists

Papists were made without any exemption, and they all declared to be disloyal who embraced not the Reformed Religion, particularly in the 17th Act of the third Parliament of *James the VI.* and the 8th Act of the I. Parliament of *Charles the II.*

Fifthly, We are to swear that there lyes no obligation on us by vertue of the late Covenants, or any other manner of way to endeavour the change of the Government, either in Church, or State, as it is established by Law, where we suppose we are sworn not only to maintain Monarchy, but also, as our Law ties us, in the present line, and in the nearest in kin to our present King, altho they should be Papists, altho we judge the Coronation Oath in the eight Act of the first Parliament of *James the VI.* to be contradictory, which yet is a standing unrepealed Law, since this currant Parliament hath ratified, and confirmed all Acts made in favour of the Protestant Religion, whereof this is one, so that we swear Contradictions.

Sixthly, as for the Church Government, as it is now established by Law, there hath not been, nor are yet wanting sound Protestants who assert the *Jus divinum* of Episcopacy, such could not in conscience take this Oath, seeing the King by vertue of his Prerogative, and Supremacy is empowered by Law to dispose of the External Government, and Policy of the Church, as he pleases, as for such as look upon Episcopal Government as indifferent in it self, notwithstanding the submission that we give to it, or have engaged for, they can as litle swear on these terms: for why should they swear never to endeavor to alter that which in it self they look upon as alterable, there being no indifferent thing which in tract of time, through the corruption of Men, may not prove hurtful? and why might not men in their Station endeavor the redressing (by fair means) of any such evil, and advise his Majesty, if he be willing, to exert the power settled on him by the law, for freeing the Church from any inconveniency? and altho we have engaged to obey Bishops, yet we ever did wish that they may be settled among it us in a way more suitable to the primitive times *viz.* That their number might be more encreased, that they might be called by the Church allenary to that office, and that they might be made liable to the censure of the Church for their doctrine, life, and diligence, that they might not be such pragmatikal Medlers in Civil affairs, and that Synods, and Presbyteries might have more power then is assigned them by the Act of Restitution; from the seeking a Remedy in any of which things this Oath doth tie us up.

Seventhly, the power given to the King by the present laws, if he should be popish, should be very prejudicial to the Protestant Interest, for by the first Act of the 2^d Parliament of *Charles* the 2^d he may not only dispose of the external Policy of the Church, but may emit such Acts concerning the Persons imployed therein; & all Ecclesiastical Meetings, and Matters to be treated upon therein, as he shall think fit, and this Act only published is to oblige all his Subjects, and by the Act for a National Synod no Doctrinal Matter may be proposed, debated, or concluded without his express allowance; in the foresaid case it is easie to divine, what advantage the Enemies of our Religion will have for the overturning of all.

Hic Rhacus velis, & magno merentur Arida

EDENBURGH, The sederunt of the Council.

Sederunt vigesimo secundo Die Septembris, 1681.

His Royal Highness, &c.

Montrose,
Errall,
Marshall,

Marr,
Glencarne,
Winton,

Linlithgow,
Perth,
Strathmore,
E 3

Roxburgh.

(38.)

Roxburgh,
Queensberry,
Airley,
Kintore,
Breadalbane,
Lorne,

Levingston,
Bishop of Edinburgh,
Elphinston,
Rosse,
Dalziel,
Treasurer Deputy Præses, Lundie.

Advocate
Justice Clerk,
Collintoun,
Tarbet,
Haddo,
Treasurer Deputy Præses, Lundie.

This day the *Test* was subscribed by the above-written Privy Councillors, and by the Earl of *Queensberry*, who coming in after the rest had taken it declared that he took it with the Explication following,

The Earl of Queensberrie's Explanation of the Test when he took it.

HIS Lordship declared that by that part of the *Test*, *That there lyes no obligation --- to endeavour any change, or alteration in the Government, &c.* He did not understand himself to be oblidged against *Alterations*, In case it should please His Majestie to make alterations of the Government of Church or State.

HALTRUDEHOUSE

Sederunt vigesimo primo Die Octobris 1681.

His Royal Highness, &c.

Winton,
Perth,
Strathmore,
Queensberry,
Ancram,

Airley,
Lorne,
Levingston,
Bishop of Edinburgh,

Treasurer Deputy Præses;
Register,
Advocate,
Collintoun.

This day, the Bishop of *Edinburgh* having drawn up a long Explication of the *Test*, to satisfie the many Objections, and Scruples moved against it, especially by the conformed Clergie, presented it to the Council for their Lp's Approbation, which was ordered to be read: But the paper proving prolix, and tedious, His Highness, after reading of a few leaves, interrupted, saying very wittily, and pertinently, that the first Chapter of *John* with a stone will chase away a dog, and so brake it off. Yet the Bishop was afterward allowed to print it, if he pleased, and here you have it.

The

The Bishop of Edinburgh's *Explanatory* *Vindication of the Test.*

THE last Session of this current Parliament considering the interest of the true Protestant Religion to be the most sacred and important of all others; doth by the first Act, revive, ratifie, and confirm all Acts and Statutes, made in our former Parliaments, establishing the same in this Kingdom: which Acts being made by our wise Ancestors when the Protestant Religion was in greatest danger, not only from the great number of Popish Subjects in this Kingdom, many whereof were persons of greatest interest, power, and influence therein, but from the Power of France, as well as of the Pope, both which were zealously bent to re-establish, and confirm the settlement of Popery in its Jurisdictions, and Superstitions amongst us, were judged by all, both in Articles and Parliament, and that after long and strenuous application and endeavour in contriving a new Act for these ends, not only sufficient, but the best security for our Religion, against all hazards and contingencies, in which the best and wisest part of the Parliament acquiesced, till the importunity and repeated clamours of some, who needs would appear more warmly concerned in this matter than others, they offering new overtures to the Articles, for the securing of the Protestant Religion, of which they often received an account in open Parliament, did awaken a more narrow inspection into this more concerning Affair: And therefore for the farther security of Religion, from the danger of Popery on the one hand, and of Principles and Practices of Rebellion, and fanatical Schism on the other, did judge it necessary, that an Act should be past, disabling Papists, and Fanaticks from any power, or capacity, to subvert or overthrow it; which in their deep wisdom they found could never be so effectually done as by keeping all such out of places of publick Trust and Employment, Civil, Ecclesiastick, or Military: And in regard that the good and wholesom Laws, and the steady, and vigorous execution thereof, are the best and most firm human security of Religion: Therefore such wise provisions were piously made by that Act, as might bar all disaffected to the Protestant Religion, from electing, or being elected Members of Parliament, wherein the Law-making power is lodged; or from creeping into any Office or Trust, whereby the execution of the Law is managed: So that our established Religion might never be endangered, or subverted by evil or corrupt Laws, or by the remiss and negligent execution of good ones.

Notwithstanding such is the fate of the best of human Constitutions that nothing can be so piously intended, or prudently contrived, but either through ignorance or malice, misprision or mistake, it may be misrepresented, misconstrued, and many groundless, and unaccountable jealousies, by scruples and prejudices entertained against it, as is but too clearly intanced in the matter of the present Oath, and Test, which the wisdom of our Governours hath enacted, and appointed to be taken by all persons employed in Offices of publick Trust, as the best fence of the Church, and security of the Protestant Religion against the invasion and encroachments they stand in danger of from the restless adversaries.

Some of the Regular and Orthodox Clergy, and other well-meaning Subjects, having entertained some jealousies which far exceed their causes, and vented some scruples and objections against it, which are most part founded on mistakes, and unnecessary, not to say uncharitable stretching and extending the meaning thereof far beyond either the genuine sense of the words, or design and intention of the Parliament, in framing and enjoying that Test, tenderness and compassion towards these conform and loyal persons, who may either be imposed upon by the malice and craft of the Church's Adversaries, to stumble at, or by their own fears, and misapprehensions, may be led into mistakes of the meaning, and design of this excellent mean for securing our Church and Religion, hath prevailed with us to endeavour a short Essay, for vindicating this Oath and Test from all mistakes and scruples, by answering, and satisfying the Objections which are commonly moved against it; and that thereby the plain and genuine sense, in which this Oath is required by Authority to be taken by all persons in Trust, may be clear and apparent.

Pursuant to this, it will be fit to read and consider the Oath or Test it self, as it is contained in the sixth Act of the last Session of this Current Parliament.

In the next place, it will not be amiss to rank up the doubts and objections moved against it, in their several Heads and Classes, and to resolve and answer them accordingly, in their respective place and order.

Of these *Scruples and Objections* some are founded upon the *Confession of Faith*, contained in the foresaid Oath: others arise from the Oath of Allegiance and Supremacy, and the asserting therein of the Kings Prerogative: some are taken from that part of the Test, wherein the unlawfulness of assembling in any Councils or Conventions, to treat, consult or determine in any matter of State, Civil or Ecclesiastick, without the Kings special command and license had thereto, is asserted and sworn: and finally others arise from the Clause, asserting, that no obligation lyes from the late Covenants, or any other manner of way whatsoever, to endeavour any change

change or alteration in the Government, either in Church or State, as the same is now established by the Laws of this Kingdom.

It is beyond all peradventure that as Conscience is the most tender thing in the Soul of man, so Oaths are of the strictest force and obligation, and are to be taken in *Truth Righteousness and Judgment*: which is the Doctrine of all sound Casuists, *Juramenti obligatio est stricti juris*; yet this *strictum juris* is not so to be understood, as if it did exclude all *sensum and interpreting of it*, the interpretation thereof amounting to no more than merely to make clear and plain any word or sentence therein, which may seem to be *dark, doubtful and ambiguous*. It is excellently said by that judicious Casuist, Doctor *Sanderone*, Prel. 2. *De juramenti obligatione*, p. 8. *De lege Charitatis aliena dicta, Escaia, praesertim Principum, Parentum, aliorumque; Reclorum sunt benigne interpretationis. Juxta id quod dici solet, dubia esse interpretanda in meliorem partem.* That is, by the Law of Charity the words and deeds of others, especially of our Princes, Parents, and other Governours, are to be moderated by a favourable interpretation, according to the usual maxim, *That things doubtful are to be interpreted to the best sense*.

This being premised, the Objections of the first Classis arising upon the *Confession of Faith* are to be first considered; and in order to this it must be remembered, that this *Confession* is not to be lookt upon as fully comprehensive of all the Protestant Doctrine in opposition to all the Errors, and Superstition of the *Romish Church*, and other *Heresies*; nor is there any one amongst the Harmony of the Confessions of the Reformed Churches, which can challenge this perfection to it self: nor is it to be thought strange, *that in many things it should be defective*, if we consider, that it was hastily compiled in the short space of four days, by a select number of Barons, and Ministers, in the very Infancy of our Reformation as the History of the Reformation of the Church of Scotland, commonly ascribed to *John Knox*, Printed at London, in the Year 1644 in Fol. p. 252. doth inform: Nor are the Authors of the foresaid *Confession* so positive, as to look upon all therein contained as infallible, or to be received as Articles of Faith, as appears from the Preface prefixed thereto, as it is set down in the History of the Reformation foresaid, p. 253. wherein they promise upon their Honours and Fidelity, Reformation of any Article or Sentence therein, which shall be proved to be amiss, or Erroneous, so that it is not to be considered as the compleat Standard of the Protestant Faith and Doctrine, in which nothing is wanting, but is inserted in the body of this Oath as being the only Protestant Confession in this Church, which is stamped with the impress of Lawful Authority, it being ratified by the first Parliament, *James the VI Anno 1567.* and is the most Ancient, being received for six score years, without any contradiction in this Kingdom; and is only used in this Oath, *designative*, to express that, as a particular systeme, wherein the main Substantials of the Protestant Religion, sworn unto, are contained. If it be asked, What, or where is the Protestant Religion? The answer is plain, that it is the true Christian Religion, as it is reformed from the Errors and Superstitions of the Popish Church, and is contained in the harmony of the Protestant Church's Confessions, which agree in the chief and principal Substantials, tho they may differ in lesser matters, and opinions disputable, among which this our *Confession* is recorded. But tho we are under no obligation to justify every Sentence or Article thereof, yet it deserves so much reverence from us, as to justify it, so far as we may, from any charge of Error or Heterodoxy; and the rather that, upon due tryal and examination, there seemeth nothing to be contained in it which is not agreeable to the charitable Analogy of Faith, and may not admit of a very fair, true and orthodox sense and interpretation, as the following Answers to the Scruples and Objections arising upon it, will sufficiently evince.

It is objected by some then, 1. That in the third Art. of *Original Sin* it is said, That by it the Image of God was utterly defaced in man; which seems to run cross to the stream of the Protestant Doctrine, which asserts, That the Remains of the Divine Image still abide in the Soul, notwithstanding of mans fall. The answer is easie, if we shall carefully distinguish betwixt defacing of the Image of God, which imports no more than a darkning or maiming thereof, and utter destroying of that Image, which implies the total subversion or abolition of it; and that the former is allowed by all sound Protestants.

It is objected, 2. That Art. 17. it is said, That it is blasphemy to affirm, that men who live according to equity and justice, shall be saved, whatsoever Religion they profess, since without Christ Jesus there is neither life nor salvation; which some think a very uncharitable doctrine, barring all the Ancient Philosophers, and Moralists, such as *Plato, Seneca, Socrates, Plutarch, &c.* from eternal life and salvation. Answer 1. That Clause is but a consequence drawn from the 16th Article, rather than any essential part of its doctrine, as will appear upon the perusal. 2. It is most infallibly true, that there is no Name under Heaven by which salvation can be obtained, but the Name of Jesus; which imports at least a sense of sin, and of the necessity of expiating the same, and of propitiating God toward the sinner in every one that shall be saved; which by some is termed an implicate knowledg of Christ Jesus, who alone is the grand Propitiation, and such a knowledg as the moral *Gentiles*, and even the *Jews* had before the Revelation and Exhibition of the Person of the *Messiah*, in the fulness of time; and how far an implicate knowledg of Jesus Christ in his Doctrine and Offices, before his exhibition in time, is necessary to salvation, is not of easie determination. And therefore, 3. This Clause must be supposed to respect the Gospel Oeconomy, and Evangelical dispensation, and to extend to such as are blessed with the manifestation of the Gospel, and clear revelation of Jesus Christ thereby; And in this sense it is beyond all doubt, that none come to age, and the clear

clear exercise of Reason, in an ordinary way, shall be saved, but such only as believe in him, own his Doctrine, and sincerely obey his holy Precepts.

It is objected, 3. That from the 19th Article, the interpretation of the sacred Scripture appertaineth to the Spirit of God, by which the Scripture was dictated and written, and not to any person, or Church, for any Preheminence or Prerogative; personal or local; which seems to cut off all power of interpreting Scriptures from the Ancient Fathers, or General Councils.

Ans. The harmonious Doctrine of the Protestant Church is, That the Spirit of God speaking in the Scriptures is as the best Judge, so the only best and infallible Interpreter of Scripture, whereby, tho the primary and authoritative Interpretation of the Scripture is ascribed to that blessed Spirit yet thereby is not denied to the Fathers and Councils a ministerial and declaratory power, in expounding the sacred Word, which is of great weight and authority with all Christians; who needs must believe these holy persons and Assemblies to be ordinarily assisted by the light and conduct of his holy Spirit, who promised to be with his Church to the end of the world.

It is objected, 4. That Article 19. the right administration of the Sacraments is one of the Notes of the true Church of God. And *Art. 23.* requires to the right administration of the Sacraments, that they be ministred in such Elements, and in such sort as God hath appointed; whence some would infer, That all such Churches as use circumstances in the administration thereof which are not appointed by God, as the mixing of Water with Wine in the holy Eucharist, or of Oyl with Water in Baptism, must be by this Doctrine unchurched. *Ans.* When the 23^d Article requireth to a true Church, that the Sacraments be administred in such sort as God has appointed, it mainly relateth to the words of Consecration, and to the institution, which indeed are essentially requisite to the very being of the Sacraments, these being null which are celebrated without them, and not according to the institution. As for the Elements, tho these be necessary, at least in ordinary cases, yet the mixtures and superadditions to these appointed Elements do not absolutely nullify, tho they do corrupt the Sacraments. And that this is the meaning of the 23^d Article appears clear from the words immediately following, *viz.* else we affirm; that they cease to be the right Sacraments of Christ Jesus, where they are not denied simply to be Sacraments, but are charged as Sacraments not rightly and duly administred, as these are which are not vitiated and adulterated by superstitious mixtures.

It is objected 5. from that same Article 23. That to the being of lawful Ministers it is required, that they be men lawfully chosen thereto by some Kirk; which seems to import the necessity of popular Elections, and to cancel the Rights of Patronages, and to unminister such as are presented by them. *Ans.* All Ministers presented by Patrons are elected by the Church, in as much as Edicts are served, whereby the peoples consent is legally obtained before the person presented be collated or inducted to the particular Flock or Congregation; And that by this Article Laik Patronages are not annulled appears evident by the seventh Act of the Parliament, 1667. wherein the same *Confession of Faith*, and all its Articles are authorized, and therefor cannot be supposed, by any Article of the foresaid *Confession*, to have been intended to be cast and overturned.

It is objected, 6. That in the 15. Article amongst works which are reputed to be good before God to repress Tyranny is enumerate for one, which seems to encourage resistance and rebellion against the Supreme Civil Powers. *Ans.* Besides what may be said concerning Tyranny in inferior Judges, Magistrates, and other subordinate Superiors, the repression whereof is certainly a good work; If we consider Tyranny in the Supreme Magistrate, it can only be said repressible by fair, just and lawful means: For *si possumus quod jure possumus*: To suppress Tyranny by resistance or rebellion were to do evil that good may come of it, contrary to the Apostolical Rule and injunction; but to suppress Tyranny by a regular assilting to make good Laws, by devout prayers, and pious Instructions and exhortations, may well be reckoned among good works.

It is objected, 7. That in the 23. Article the Popish Ministers are no Ministers of Jesus Christ, which is contrary both to the doctrine, and practice of all sound Protestant Churches. *Ans.* 1. That Assertion is not contained in the doctrinal part of that Article 23. but is a Corollary illogically deduced from the first part thereof; and we are not concerned in the *ill Consequentes and Paralogisms*, which may be found in any of these Articles. 2. All Protestant Churches do acknowledg the Bishops, Priests, and Deacons in the Romish Church to be real and ordained Ministers of the Catholick Church, owning the Ordination of their Ministers to be derived in its succession from them: So that without unchurching themselves they must needs believe these to be really Ministers; and the practice of Protestants doth universally demonstrate this: In so much that when a Romish Priest comes over from them, and reconciles himself to the Protestant Church, he is allowed to exercise all the parts, and functions of the holy Ministry, without any new ordination: So that the meaning must be, either 1. That many are reputed Ministers in the Romish Church which indeed are no Ministers of Jesus Christ, *viz.* Deacons, Acolyths, and Exorcists &c. and as follows in the Article, even women among them are allowed to baptize, who sure are none of Christs Ministers. Or 2. That they are no pious and faithful Ministers, nor such as Christ will own to be his, as is insinuate in the foresaid History of Reformation of the Church of Scotland, p. 251. where it calls all Popish Ministers then in this Kingdom, Thieves, Murderers, Rebels, Traitors, &c. Or 3. That they were not duly elected Ministers, as is asserted *ibid.* Or in fine, That they are not sound or incorrupted Ministers

nisters. For according to the harmony of the Protestant Confessions, among which this Confession of ours is inserted, the Ministers of the Popish Church are owned to be true and real Ministers, in the same sense wherein that Church is acknowledg'd to be a true, and real Church, tho not a sound and pure one; even as we say, that a Leprous or Paralytick man is a true and real man, tho not a healthful and sound man: as this same Confession, Article 17. calls the Church at *Jerusalem*, consisting of *Priests, Scribes, Pharisees, &c.* no Church of God, by reason of the corruptions thereof, wherein must be meant no sound or incorrupt Church of God, as appears from the Title, viz. Of the Notes by which, &c.

Many other Particulars may perhaps be excepted against, which are contained in that Confession, besides these which are here considered, and which we are not concerned much to notice, or to dip upon the Authority enacting, or authorising that Confession at the first forming thereof, since it is inserted in the *Test* only *designative*, as pointing to that Ancient system, wherein the substantial of the Protestant Religion are to be found, (as was declared openly in Parliament, when some more zealous than considerate, would needs press the mentioning of it in this Oath) which must be presumed to be the alone use of that Confession in this *Test*, since upon this account the Articles thereof were refused so much as to be read in Parliament, as being no part of our Oath, and formerly ratified by Law, at the passing of the Act, enjoying the same: For if the words of the Oath be seriously weighed, we shall find, that by this *Test* we swear to own, profess, and believe not every Article, or every Proposition, or every Consequence in that Confession; but only the true Protestant Religion contained therein, and which Religion we believe to be founded on, and agreeable to the written word of God; to the which Religion we bind our selves to adhere all the days of our life, and to educate our children therein. *So* So that if there be any Article, or proposition, or consequence contained in that Confession, which is contrary, or repugnant to the true Protestant Religion to be found in the harmony of Confessions; We do not swear to own or believe it. If it be replied, that by that Oath and *Test*, we swear to disown and renounce all Principles, Doctrines, and Practices, which are contrary to, and inconsistent with the said Protestant Religion, and Confession of Faith, and that therefore we are bound to own and believe all Principles and Doctrines which are contained in the Confession foresaid. *Ans* 1. The Confession of Faith repeated in this clause cannot be supposed to be understood otherways than as it is taken in the former, which is only *designative*, and denoting the system where the Protestant Doctrine is to be found, *ut supra*. 2. The words of the Oath do sufficiently clear up this seeming difficulty, which are, That I disown and renounce all such Doctrines, Principles and Practices, Popish or Fanatical, which are contrary to, &c. So that unless there be errors, or Heterodox Doctrines, which are neither Popish nor Fanatical, discovered to be contained in the Confession foresaid, no shadow of scruple can be rationally entertained upon this account; and tho there were, yet it is apparent, that the intention of the Parliament, in inserting that Confession into this Oath, was only so far as it stands in opposition to Popery and Fanaticism, and no further: So that if there be any Doctrines which oppose any part or Article of that Confession, which are neither Popish nor Fanatical, we are not bound by this part of the Oath to renounce them: and no sound loyal Protestant will scruple to renounce all such Doctrines and Principles which are either Popish or Fanatical, which are repugnant to this Confession foresaid. To close up this Head of Objections drawn from the Confession foresaid, it is to be considered, that the famous and learned Doctors of *Aberdeen*, Anno 1638. in their Demands and Duplys, do in Demand II. declare and take God to witness, that they, and other people, were willing to subscribe this very Confession of Faith. And II. Duply. They assert, that they are ready, nor only to subscribe, but to swear this National Confession of Faith, (so they call it) ratified, and registred in Parliament. To which Declaration they add the Oath sworn by them, when they received the degree of *Doctors in Theology*, which Oath they solemnly again renew in the 7. Duply. And this they judged necessary for them to do, to satisfy the world, that they were no favourers of Popery, which, as then, so now, is the Engine whereby to calumniate loyal Subjects, and soundest Protestants, as Papists in masquerade. By which we understand, that these learned loyal Divines, and Orthodox, (the glory of the Reformed Church in their Age) who well understood the Protestant Doctrine, the unlawfulness of resisting the supreme Magistrate upon any pretence whatsoever, the intrinsic power of the Church, together with the Interests and Rights of Episcopal Government, did not scruple to subscribe and swear this Confession of Faith, and that as a *Test* against Popish Errors and Superstition. So that they who shall now refuse to swear to own and believe the true Protestant Religion, reformed from Popery, contained in this Confession, do occasion too much umbrage of suspicion and jealousy that they are not sound nor solid Protestants.

As to the second Head or Class of Objections, drawn from the Oath of Allegiance and Supremacy, which, together with the maintenance of the Kings Prerogative, is asserted and sworn in the *Test*, the great stress of the Objections founded thereupon lies in these two Particulars: That the Kings Supremacy, as it is asserted by the Act of Parliament, viz 16

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Anno 1669, seems to deprive and devert the Church of all its intrinsic Power; as if all Ecclesiastical Authority were derived not from Jesus Christ, the alone Prince, and Vital Head of his Church, but from secular Princes and Magistrates. And 2. That by the foresaid Act there seems to be a Power lodged in the King, to alter and change the established Episcopal Government of the Church, at his Royal pleasure, which they can never swear to maintain as a Prerogative of the Crown who believe Episcopacy to be of Divine Right, and Apostolical Institution, and by consequence, an œcumenick and unalterable Government by any power on earth.

For the more clear satisfaction of these Objections, it will be convenient to read and consider that Act of Parliament, November the 16th. 1669: in which, upon due perusal and examination, nothing new or dangerous to the settlement of our National Church, will be found comprehended. Our Saviour was very unconcerned to regulate the bounds of Sovereign Powers: he doth not examine *Pilate's* Power to judge of Blasphemy or Treason, but acknowledgeth and submits unto it: And so his Apostles neither enquire into the Rights of the *Roman* Emperors, nor limit the exercise of their Power, but seriously recommend to all good Subjects, as their duty, submission and obedience to the higher Powers: and they leave the secular Powers of the world in possession of whatever Authority, either over persons or matters; they found them invested with. The Magistrate doth not intitle himself to the Spiritual Function, in preaching the Word, administering the Sacraments, exercising the Power of Ordination, or the Keys, &c. Our gracious King never challenged these spiritual Powers, which indeed belong to the Bishops and other Ministers of the Church. The holiest and best Kings of *Israel* and *Judah*, are famous for abolishing false Worship, asserting and settling of the Truth: Many excellent Ordinances concerning Religion were made by *Moses*, *Joshua*, *David*, *Solomon*, *Asa*, *Josiah*, &c. which are recorded and applauded by the Spirit of God in the Scriptures. These ordered and regulated divine worship, Sacraments, and Covenants with God; they erected Altars, Temples, and Tabernacles, and dedicated them to God: They destroyed Idolatry, reformed abuses in Gods House and service, and both settled the standing worship, and ordained Thanksgivings, and Humiliations; so that the ordering of matters of Religion was not exempted from the supreme secular Power under the Law; nor did the Emperors and Sovereign Princes of the earth by embracing Christianity lose their Power enjoyed by all their Predecessors, which if they had, they should have been thereby inevitably exposed to the disturbances of their Government by Seditions and Rebellions upon every frantick eruption of religious Melancholy. If *Constantine* had not interposed his Authority for suppressing the *Arrian* Heresie, what had become either of Government or Religion? The drawing up of Canons for regulating Religion our Lord committed to the Apostles and their Successors the Bishops with other Ecclesiastical persons: but that these Canons should be enforced as Laws by temporal sanctions and penalties, this flowed from the authority of the Civil Power: And accordingly in the second œcumenical Council, the Bishops and Fathers assembled at *Constantinople* beseech *Theodosius* the elder to ratifie the Decrees of that Synod. *Justinian* established the main Canon or *Codex* of the Universal Church, consisting of the Canons of the first general and five Ancient provincial Councils, commanding them to be kept as Laws.

As matters of Religion have not been exempted from the cognizance and regulation of the Supreme Civil Powers, much less can the exemption of Ecclesiastical persons be pretended. Under the Law, we find *Solomon* judging an High Priest offending, viz. *Abiathar*, whom he turned out, and placed *Zadock* in his Room and Office, 1 *King*, 2. 27, 35. and as single persons, so if we consider Church-Officers in their Ecclesiastical Meetings and Assemblies, we find the Calling thereof lodged in the supreme Magistrate; for *Moses*, not *Aaron*, *David*, not *Abiathar*, *Solomon*, not *Zadock*, summoned the Priests and Levites to the Meetings, so under the Gospel, in the pure and primitive times, we find no Councils, nor Synods called by the Bishop of *Rome*, nor by any other Bishop, or by any other Ministers forming themselves into Classical and Synodical Meetings, against, or without the Consent of the Christian Prince or Magistrate. To any who will be at the pains to consult Antiquity or Ecclesiastical History, it will evidently appear, that the indication of times and places, the convoking of persons, the precedency, the ordering of debates, the dissolution of Assemblies, the confirmation of Canons so as to enforce them as Laws in the General or Provincial Councils, were all performed by the supreme Magistrate: *St. Paul* himself appealed to *Cæsar*, when arraigned and called in question for his Religion; and *Athanasius* appealed from the Synod at *Tyre* to *Constantine*, to whom were two appeals made in the case of *Cassianus* and *Donatus*, besides many other instances of the like nature. And it were heartily to be wished, that all Church-men and Ministers whatsoever were thoroughly convinced of the doctrine and duty of their obedience to the Supreme Powers, otherways as they grow popular they become dangerous: *Sacerdotes equidem sunt ingenio, ut nō parent terrent* *St. Chrysostom* comments excellently on *Rom.* 13, v. 1, 2. Let every soul be subject, saying, whether he be an Apostle or Evangelist, a Prophet, &c. let him be subject to the higher Powers. Our blessed Saviour and the Apostles were the most eminent Ecclesiastical persons, yet did not think themselves exempted from the Authority and Jurisdiction of the Civil Powers; and if the 24th. Article of the Confession of Faith, mentioned in the Test, be considered, it will be found to grant as much to the Civil Magistrate as here is asserted and yielded.

Yet all this power belonging to the supreme Magistrate over religious persons and matters doth not interfere with, nor suppress the intrinsic and essential Power, and Authority of the Church; for the Church's power is internal and spiritual, and the power of the supreme Magistrate is external, coercive and temporal; which, when duly weighed in a just balance, will be found not only to be poised of just different kinds and natures, but so far from interfering with or destroying one another, that if duly and rightly managed, they do mutually assist and support each other. Beside, the sense of the Oath of Supremacy asserted in a Speech delivered by B. James Usher then Bishop of Meath, and afterwards Primate of Ireland, at Dublin, Novemb. 22. 1622. for which he received the thanks of King James the sixth, the Solomon of his Age, by a Letter from His Majesty, dated the 11. day of January 1623. is so clear and plain, that it leaves no place for any manner of scruple concerning the intrinsic power of the Church, as if it were invaded and incroached upon by the foresaid Oath; where it is said, That the Kings Supremacy reacheth the outward man only, but the spiritual and intrinsic power of the Church reacheth to the inward; this binding or loosing the soul, that laying hold only on the body, and things belonging thereto: Yea, there is an Act of the Parliament of England, 13. Eliz. declaring, That by the supreme Government given to the Prince is understood that kind of Government only which is exercised with the Civil Sword.

So that there is nothing can be more evident than that by the Kings Supremacy, as asserted by the Act November 16. 1669. no incroachment or invasion is made upon the spiritual intrinsic power of the Church. Besides, by the very express words of that assertory Act, *No more is declared to belong to the King, save the ordering and disposal of the external Government and Policy of the Church.* And again, *The administration of the external Government of the Church;* where not a syllable can be found touching upon the internal, spiritual, and essential power and jurisdiction thereof. And as to the word, *matters*, contained in that Act, & the Kings emitting Orders concerning religious matters as well as persons, it needs stumble no thinking person; as if our Religion were thereby exposed to dangers at the pleasure of the Prince, if we consider the following words, *Matters to be proposed and determined in Ecclesiastical Meetings or Assemblies*, which reserves the power of determining matters of Religion still in the hands of that Meeting or Assembly: So that tho the King may, by virtue of his Royal Supremacy, propose any matter of Religion to a National Ass. Yet it is not to pass unto an act; till first it be determined by the deliberate and free consent, vote and suffrage of the major part of that Ecclesiastical Meeting. And now let the Impartial Judge, if any so great security for the true Protestant Religion can be devised as to have all Bishops, Ministers, and Members of a National Synod (to whom the determining of matters of Religion by Law belongs), solemnly sworn and bound by this Oath and Test, to adhere to the same Protestant Religion all the days of their lives, and never to consent to any alteration or change thereof.

As for the other Objection of these who think that by this assertory Act, 1669. there is a power declared to be vested in the King, to alter, and change the Established Episcopal Government of this National Church, which these who believe Episcopacy to be of Divine Right, and Apostolical Institution, and by consequence, unalterable by any humane Authority, can never swear to belong to the Crown, as an Inherent Right and Prerogative thereof.

For answer: Tho this point of the Divine Right of Episcopacy is tenderly to be touched, the Phrase of *Jus Divinum* being in terms subject to misconstruction; yet it must be acknowledged, that no form of Church-Government was ever yet modelled, or set up, which hath not claimed to a *Jus Divinum*, as well as Episcopacy, tho every one of them, with far more noise, but with far less reason than this hath done. For the Papists ground the Popes Oecumenical Supremacy upon Christs Commands, to St. Peter, to execute it, and to all the Flock of Christ, Sovereign Princes as well as others, to submit to him, as to their Universal Pastor. The Presbyterians cry up their model of Government, tho of a very late Edition, as the very Scepter of Christs Kingdom, to which all Kings are bound to submit theirs, making it also unalterable, and as inevitably necessary to the being of a Church, as the Word and Sacraments. The Independents assert, that any single Confederate Congregation is, *Jure Divino*, free and absolute within itself, to govern itself by such Rules as shall be consented to by its Members; without dependance from any, except Jesus Christ alone, or subjection to any Prince, Bishop, or any other Person, or Consistory whatsoever: So that all these other flatly deny the Kings Supremacy, and claim a Power and Jurisdiction over him, The Presbyterians agreeing with the Papists in this branch of Antichristianism, and claiming to their Consistories as full and absolute Jurisdiction over Princes, even to the highest censure by Excommunication, as the Romanists challenge to belong to the Pope; or pleading, at least, a priviledge of exemption from the Kings Authority and Jurisdiction; The Independents exempting their Congregations from all Ecclesiastical subjection to Christian Kings, in as ample manner as the Papists do their Clergy: whereas the Protestant Bishop, and regular Ministers, as becometh good Christians, and dutiful Subjects, do neither pretend to any Jurisdiction over the King, nor withdraw their Subjection from him, but humbly acknowledg His Majesty to have Sovereign Power over them, as well as over his other Subjects, and that in all matters, Ecclesiastical as well as Temporal.

But for a more close Answer to this Objection, They who believe the Indifferency of the forms and models of Church-Government cannot have any scruple on this Head, in regard of the present Church-Government. For should it be changed by Authority, then are they not obliged by this Oath

Oath any longer to own it: *Cessante enim materia juramenti, cessat ejusdem obligatio: radice obligationis subacta, tollitur una pullulus inde obligatio*, according to all Casuists. *Juramentum sequitur naturam & conditionem actus cui adjungitur*, id est, *materia circa quam versatur*, sicut *accessorium sequitur naturam sui principalis*: *accessorium extinguitur cum principale cadit*, D. Sanderfone. These who believe Episcopacy to be of Divine Right, have no cause to fear that ever the King will alter this specifick form of Church-Government, neither inclination, nor interest moving him to it: The Aphorism so usual with His Majesties Royal Grandfather, *No Bishop no King*, cannot but make deep impression on His Majesty, and must be considered not only as a sentence full of present truth when it was uttered; but a sad prophecy of the Tragical events which after ensued: And as the greatest and most politick Underminers of the Monarchy did of late, so their successors continue still to make their oblique and first assaults upon it, by raising their batteries against the settled Episcopacy. 3. If the words of that assertory Act be sedately weighed, they will not be found to bear the weight of this Objection; for the odds are vast betwixt them, a power to order, and dispose the external Government, and Policy of the Church, together with the ordering of the administration of the external Government of the Church; which are the words of that Act, and the power of altering and changing the specifick and essential Government of the Church; the former relating to the Ecclesiastical ordering of Ecclesiastical Persons, Matters and Meetings as the Act itself expressly bears. *The King may and ought to have the ordering, and disposing, and administration of the external Government of the Church, without claiming a power to alter or change the very Species, Body, and essence of it*. Nor may we in charity presume, that our Gracious King challenges any such power to himself, by virtue of that Act assertory; nor doth it hinder any to believe Episcopal Government to be institute of God, that, in the exercise and external administration thereof, it is subject to the Orders and Authority of the Prince: for the same power may be said to be from Heaven, and to be of men under different notions and respects; to be from Heaven, and of God, in respect of the substance of the thing in general, and to be of men, in respect of the determination of sundry particulars requisite to the lawful and laudable exercise thereof: Tho the Ministerial Power be of God, yet are the Ministers, in executing the Acts proper to their Ministerial Functions, regulated and ordered by Ecclesiastical Laws, Canons of the Church, or Acts of General Assemblies: Nor doth the derivation of any power from God necessarily infer the Non-subjection of the persons in whom that power is vested to any others, as to the managing and exercise thereof: For the power which Fathers have over their Children, Husbands over their Wives, Masters over their Servants, is from Heaven, of God, and not of Men; yet are Parents, Husbands, Masters, in the exercise of their several respective powers, subject to the powers, Jurisdictions, and Laws of the lawful Sovereigns. It will prove a very difficult task for any man to find out a clear and satisfying reason of difference, in this present case, betwixt the Ecclesiastical power & Oeconomical, why the one, because it claimeth to be of Divine Right, should be therefore exempted from the Regulation of it, in its exercise, by humane Laws, and not the other, which flows from Heaven, and is equally of Divine Right with the former. 5. In fine, All such who have sworn the Oath of Allegiance and Supremacy, since the assertory Act was made, Anno 1669, can have no pretence to scruple the taking of this Test, upon account of any thing contained in the Act of Supremacy, already sworn by them, in as much as they must be understood to have taken that Oath in the sense of the Lawgivers who framed that Act.

Before we come to the Third Class of Objections, it will be necessary to say something for satisfaction of the Doubts of some who apprehend contradictions betwixt some expressions in the Confession of Faith, and others in the same Confession; and betwixt some assertions therein, and others in the Test: So that they think by taking this Oath they shall be enswared to swear to contradictory Propositions. Two are instanced, that in the Article concerning the Immortality of Souls, it is said, *That the Elect departed this life are delivered from all torment*; And yet in the same Article it is asserted, *That neither the Elect nor Reprobate are in such sleep after death that they feel no torment*. To this seeming contradiction it is answered, 1. That this flows from the mistake and error of the Printer alone, and not from any fault in the Confession: For in that History of the Reformation of the Kirk of Scotland, of the foresaid Edition, the later part of the Article runs thus: *So that neither the one nor the other are in such sleep that they feel nothing*; Which clearly takes off all shadow of Contradiction, as well as the error of those against whom that Article seemeth to be levelled. But finally, the Latin Paraphrase of it, in the Harmony of Confessions, takes off all difficulty: For there the words run thus: *Adeo ut neque hi neque illi ita dormiant ut non sentiant in qua conditione versentur*. Another seeming contradiction, is betwixt the Confession and the Test, viz. Art. 25. it is said, *That they who resist the supreme Powers (doing that which belongs to their charge) resist Gods Ordinance, and they who deny to them their aid, counsel, comfort, &c (while the Prince and Rulers vigilantly travel in the execution of their Office;) these deny their help and support to God*: which words seem to disallow the resisting of the supreme Magistrate, only conditionally, and in a limited and restricted sense. Again the Oath and Test assert, *That it is unlawful, upon any pretence whatsoever, to take up arms against the King, or these commissionare by him*; which doth declare the resisting of the Sovereign power to be simply and absolutely unlawful, without any restriction or limitation.

Ans. Here is no *Contradiction*, if the Logical Rules be observed: For, to resist the Supreme Powers doing that which pertains to their charge is to resist Gods Ordinance, and not to resist the Supreme Powers, doing that which pertains to their charge, is to resist Gods Ordinance, were indeed a contradiction: but to resist the Supreme Powers doing that which appertains to their charge, is to resist Gods Ordinance: and to resist the Supreme Powers, upon whatsoever pretence, is to resist Gods Ordinance, imports no manner of contradiction. And so of the other proposition. To deny aid, counsel, &c. while Princes and Rulers vigilantly travel, &c. in the execution of their Office, and not to deny aid, counsel, &c. while, &c. are contradictions: but to deny aid, counsel, &c. while Princes and Rulers vigilantly travel: and to deny aid, counsel &c. to Princes and Rulers, upon no pretence whatsoever, implies nothing of a contradiction. 3. When it is told, That at the very time of the framing and enacting of the *Tess*, this Confession was represented to be wanting and defective in the Doctrine of the absolute unlawfulness of resisting the Sovereign Magistrate: and that therefore it was necessary, that agreeably to the peaceable and loyal protestant Doctrine, something might be inserted in the *Tess* to make that point more clear, full, and perspicuous, which accordingly was done: And whatever bad use might be made of the clause in the 25th Article, the scruple itself not being exempted from the wresting of unlearned and perverse men, for serving ill designs and purposes, by some bustling and seditious Spirits, to introduce the Doctrine of Conditional Allegiance, which was openly advanced by the late Covenant, and solemn League; Yet the Assertion contained in the words of that Article is undoubtedly true and certain. viz. *That the lawful Magistrate is not to be resisted, while he does what pertains to his charge, and travels vigilantly in the execution of his Office*: tho it be not full enough, or sufficiently extensive, but is more clearly and fully supplied and asserted in the Oath or *Tess* itself: So that the Doctrine of the unlawfulness of resistance, asserted in the *Tess*, is more comprehensive and full, but no way contrary, or contradictory thereto. And indeed it were most impious uncharitableness for any to suppose that the same Persons and Authority which asserteth and determineth the absolute unlawfulness of resisting in one branch of an Oath, should in another branch of the same Oath, allow of conditional resistance, especially while they proceed gravely and deliberately, after a plain representation of the defects of the Confession, in this very point of Doctrine. So that the Oath being to be taken according to the sense and meaning of the framers and imposers thereof, It is clear as light, that the late Session of Parliament, which enjoins this Oath, understood the Doctrine concerning the unlawfulness of resistance, in the simple and absolute sense supplied and express'd in the later part of the *Tess*, that thereby the Protestant Doctrine might be vindicated from all imputations of disloyalty, in seeming to countenance any pretence of resisting and rebelling against the Lawful Power which God in his providence had set over them.

The 3d. head or classis of Objections is drawn from that of asserting the unlawfulness of convocating or assembling in any Councils, Conventions, &c. to consult or determine, in any matter of State, &c. whence some Object and lay, That this cuts off intrinsick power from the Church of holding Religious Assemblies, and Church Courts, for giving ordination, and for spiritual censures, &c. To which it is sufficiently replied already by shewing that the spiritual and intrinsick power of the Church, as to this matter, is no ways hurt and diminished, by making Church meetings, as to their external and coercive power, depend upon the Supreme Magistrate his allowance and regulation.

The words of the Oath and *Tess* do sufficiently clear up this mistake, which do not bar Christian Subjects from Godly communications or quiet and peaceable meetings for Religious Worship, in preaching the word, Administration of the Sacraments, and the internal exercises of the power of the keys by ordination and spiritual jurisdiction, censuring Offenders, and absolving penitents as the Apostles and the Primitive Christians used in Ancient times of Infidelity and persecution, but only obliges not to hold meetings or assemblies for treating, consulting and determining in any matter of State, Civil or Ecclesiastical, &c. which in the plain sense and meaning relates to the external policy of the Church, and Peace, Order, and Government of the World, viz. That they shall not meet nor form themselves in Judicatories to make Laws, or to invade or overturn the settled Estate and Government of the Church, or Kingdom, without the Kings express Warrant or consent, which every sound and Loyal Protestant must needs acknowledge he is bound not to endeavour, unless he should conclude that the Sons of Peace are by the most peaceful institutions of the Word obliged to turn Sons of Thunder, to disturb, and inflame the tranquillity of mankind.

3. When we assert the unlawfulness of meetings and conventions, it is understood (except in ordinary Judgments.) Which clause is expressly inserted in the 4th Act, 1 Sess. 1. Par. Char. 2d, whereby His Majesties Royal Prerogative is recognized, and which Prerogative is Sworn in the *Tess* to be maintained and defended. The holding of Green Tables and Church assemblies in the beginning of the late fatal Rebellion against our late blessed King, and Martyr, without and against His Majesties Warrant and Licence, doth sufficiently discover the dangers, as well as the sinfulness of Church Convocations and Illegal Meetings, so that unless a man discover himself too forward to commence new Tumults and Insurrections, he will beware to entertain such Principles which tend so openly to advance and promote them.

The 4. and last classis of Objections, which militate against the Oath and *Tess*, is drawn from that clause, which asserts, That there lies no obligation from the Covenants, or Solemn League or Covenant, or any other manner of way whatsoever, to endeavour any Change or Alteration

Alteration in the Government, *either in Church or State*, as it is now established by the Laws of this Kingdom: Whence some object and say, That no Policy or Government in the world is so perfect as not in something to need correction and amendment, which every one that is entrusted with the management thereof, ought to endeavour, and in his proper station, to reform and better it, and therefore it seems unlawful to swear never to endeavour any alteration in the Government, Civil or Ecclesiastik. And seeing endeavour here may refer to the forementioned means of Leagues, Covenants, Councils, Conventions and Assemblies, relating to State-Affairs Ecclesiastik or Civil, or of taking up of Arms, [which no pious or loyal Subject will decline to renounce] without the Kings express licence: It is obvious, that by change or alteration in the Government, nothing else can be reasonably understood, but the subversion of the specifick established Government, or of the fundamental Constitution thereof; and not of every circumstance, or unnecessary part thereof. as is cleared beyond doubt, by the same Parliament which formed and enjoined this Oath and Test. Wherein many excellent Acts are made for bettering and securing the Government, both in Church and State: So that it cannot be supposed, that by this clause, any regular endeavour to rectifie or better the established Government of both, is renounced; but only such impious and irregular endeavours and attempts as intend to shake or subvert the substance, species, and body of the Monarchy and Episcopacy or the fundamental Laws and Constitutions thereof. Hence it appears a meer quibble, to cavil upon the Particle, (as) it is established; which some think had been better expressed by, (which) is established by Law, since by what is said, the Particle (as) is not to be taken reduplicative, but specificative, relating to the species, and substance of the Government. And it is a cavil, no less frivolous, which is made upon the Particle (in) the Government; which they say had been better expressed, of the Government, since that Particle (in,) must neither relate to the substance, species, and fundamentals of these Governments, to endeavour the alteration or change whereof is entirely unlawful by this Oath; or it must be interpreted by the Particle (of), by which the sinfulness of any Subjects endeavouring the change or subversion of the settled Monarchy; and Episcopacy, is sworn and asserted. The last clause in the Test setting it to be taken in the plain and genuine sense and meaning of the words, without any equivocation or mental reservation. So doth not exclude the sensing and interpreting the same by the common Rules of Speech, as well as of Justice and equity.

This Interpretation imports no more than singly to make clear and plain any word or sentence therein, which may seem to any to be dark or dubious, which serves only to discover the genuine sense of the Oath, and the true design and meaning of the imposers thereof; which is all that by this essay is undertaken and endeavoured. And if a man may swear to believe the Articles of the Apostolik Creed, or the several petitions of the Lords Prayer, or the Doctrine contained in the Ten Commandments of the Moral Law, without any equivocation, mental reservation, or evasion, &c. which yet he cannot do, without an interpretation put upon some Articles of the Creed, viz. of the descent into Hell, and upon some Petitions in the Lords Prayer; as Give us this day our daily bread, and on some of the Ten Commandments, as the Fifth, and the words of the Fourth Commandment: then may we also swear this Oath, the same words, or phrases in it need a sense or illustration to be put on them. Must a Christian abstain therefore from saying the Lords Prayer? No. Neither for this need we to admit any ambiguity or equivocation: The word certainly hath but one true sense and signification; but divers persons understand them according to the different measures of their light.

These are the most ordinary and popular scruples of greatest seeming force, which are commonly offered against this Oath and Test, and upon the issue they appear to be founded upon mistakes of the true sense and meaning of some words and clauses therein; and misconstruing of the design Authority had in framing and imposing the same. And now we having been in duty so tender and compassionate toward the Loyal and Regular Protestant Subjects, (this Vindication being intended for the satisfaction neither of Papists nor Fanatics), as to endeavour by this short essay to clear these doubts and scruples which might arise in their minds upon the Oath, that thereby they may perceive the genuine sense of the same, whereby it clearly appears, that we are not Sworn by it to maintain or believe every Article, assertion, or clause in the Confession of Faith therein mentioned, but only the true Christian Protestant Religion, as it is reformed from the errors and superstitions of the Romish Church and other Heresies; and that by it no power is asserted to belong to the Prince which is inconsistent with, or destructive of the specifick established Government of the Church, or the intrinsick or Spiritual Jurisdiction thereof; it may be fairly hoped that all good & Peaceable Subjects with their Ministers & others will meekly receive the Satisfaction here offered unto them, and compose their minds to a cheerful acquiescence in the Wisdom of their Governours, who have judged this Oath so necessary for defeating the pretended Obligations of many former unlawful and Treasonable Oaths, and the best mean and expedient for securing the Church and Protestant Religion, together with the Monarchy, from all danger of Subversion from the Papists on the one hand, and the Fanatics on the other.

It cannot but be looked on as a fatal thing, if any Conformist Ministers or truly Loyal Protestants, for whose interest, Peace and Security, this Oath was chiefly formed and enjoined, should not only, after what is said, continue to entertain peevish scruples themselves, but undutifully to fill the minds of the Populacie with prejudices as unjust as uncharitable against it, contrary to the

Rules

Rules of our most peaceable Religion, and therein following the steps of these incendiaries who fatally fired the Kingdom in the late Age, by instilling prejudices into the unwary *Mobile* from the Pulpits, or other ways, branding the Actions of the K. and Par. as imposing things sinful and unlawful. This sure will prove the greatest advantage the promoters of the *Romish* Interest will propose to themselves against our Church and Religion, in as much as every Schism and Breach amongst us, and concussion in the Ancient Government of our Church, doth visibly hazard the dissolution of the whole fabrick of our Religion.

And if things still go on at this rate, the explanation that some in our late Distractions and Rebellion made of that passage, St. John 11. v. 45. *Veniens Romani & capient gentem nostram*, will prove too true a Prophecy, and Popery will overturn all at last.

It is a wonder indeed to see how the Fanatical adversaries of this poor Church have in so short a time been so strangely multiplied in their number, and divided and subdivided into so many special opinions and Principles, crumbled into factions and fractions, biting and ready to devour one another: And if loyal Protestants also fall in pieces and by the ears among themselves, upon most unseasonable and uncharitable scruples, may it not be feared, that the vigilant adversary, who is intent upon all manner of advantages, will, when he spieth his time, over-master all with the more ease and less resistance.

It cannot in charity be doubted, but the love of the Church's Peace and Unity, Loyalty to the best of Monarchs, pious care for preserving and securing our excellent Religion from Popery, Disloyalty, and Enthusiasm, with the zeal of loyal and regular Ministers for the benefit and education of Christian Schools, under their spiritual conduct, and the dutiful regard and deference men owe to their spiritual and temporal Governours will prevail with humble, meek and teachable minds, by interpreting all the actions of Authority in the best and most favourable sense, to resolve and overcome all scruples, that stand in the way of their duty, and frankly and readily to embrace what the most transcendent Authority of this Nation hath, from sincere and pious intentions, enjoined and imposed, for so pious and excellent ends.

If this small Apology be read without gall or prejudice, the Reader will not catch at Particles or Syllables, but studying the peace of this Church and Kingdom, will receive without peevishness, prejudice or partiality, the satisfaction which herein is with so much affection and charity endeavoured and rendered, then the pains therein taken shall be thought well placed and employed.

EDENBURGH,

Sederunt tertio Die Novembris 1681.

His Royal Highness, &c.

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| <i>Athol Praeses,</i> | <i>Ancram,</i> | <i>Dalziel,</i> |
| <i>Montrose,</i> | <i>Airley,</i> | <i>President of Session;</i> |
| <i>Argyle,</i> | <i>Balcarres,</i> | <i>Treasurer Deputy,</i> |
| <i>Winton,</i> | <i>Lorn,</i> | <i>Register,</i> |
| <i>Linlithgow,</i> | <i>Levingston,</i> | <i>Advocate,</i> |
| <i>Perth,</i> | <i>Bishop of Edinburgh,</i> | <i>Justice Clerk;</i> |
| <i>Strathmore,</i> | <i>Elphinston,</i> | <i>Collintoun,</i> |
| <i>Roxburgh,</i> | <i>Rosse,</i> | <i>Lundie.</i> |

This day the Earl of Argyll having first openly declared his sense, as you have it hereafter set down in his explication, took the *Test*, as a Privy Councillor, and after he was called to, and had taken his place, the Councils explication, which I have already mentioned, having been formerly read and debated, was put to the vote, and passed, the Earl not voting thereto, as hath been remarked.

Edenburgh, the 3^d day of November, 1681.*The Privy Councils Explanation of the Test.*

FOrasmuch as some have entertained jealousies, and prejudices against the Oath and Test appointed to be taken by all persons in publik Trust, Civil, Ecclesiastical, or Military, in this Kingdom, by the Sixth Act of His Majesties Third Parliament; as if thereby they were to swear to every Proposition, or Clause of the *Confession of Faith* therein mentioned, or that invasion were made by it upon the intrinsick spiritual Power of the Church, or Power of the Keys, or as if the present Episcopal Government of this National Church, by Law established, were thereby exposed to the hazard of alteration, or subversion: All which are far from the intention, or design of the Parliament's imposing this Oath, and from the genuine sense and meaning thereof: Therefore His Royal Highness, His Majesties High Commissioner, and Lords of Privy-Council, do allow, authorise, and empower the Archbishops and Bishops to administer this Oath and Test to the Ministers, in their respective Diocesses, in this express sense: (1.) That tho the *Confession of Faith*, ratified in Parliament 1567. was framed in the Infancy of Reformation, and deserves its due praise yet by the Test we do not swear to every Proposition; or clause therein contained, but only to the true Protestant Religion, founded on the word of God, contained in that *Confession* as it is opposed to Popery and Fanaticism. (2.) That by the Test, or any clause therein contained, no invasion or encroachment is made or intended upon the intrinsick spiritual power of the Church, or power of the Keys, as it was exercised by the Apostles; and the most pure and primitive Church, in the first three Centuries after Christ, and which is still reserved intirely to the Church. (3.) That the Oath and Test is without any prejudice to the Episcopal Government of this National Church, which is declared by the first Act of the second Session of His Majesties first Parliament, to be most agreeable to the word of God, and most suitable to Monarchy, and which upon all occasions His Majesty hath declared he will inviolably and unalterably preserve. And appoint the Archbishops, and Bishops to require the Ministers in their respective Diocesses, with their first conveniency, to obey the Law in swearing, and subscribing the foresaid Oath and Test with certification, that the refusers shall be esteemed persons disaffected to the Protestant Religion, and to his Majesties Government; and that the punishment appointed by the foresaid sixth Act of His Majesties third Parliament shall be impartially, and without delay inflicted upon them. By me.

Pet. Menzeis.

Sederunt quarto Die Novembris, 1681.

His Royal Highness, &c.

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| Montrose Preses, | Winton, | Linlithgow, |
| Perth, | Stratbmore, | Roxburgh, |
| Ancram, | Airley, | Balcaras, |
| Levingston, | Bishop of Edinburgh, | Elphinstoun, |
| President of Session, | Treasurer Deputy, | Register, |
| Advocate, | Lundie. | |

This day the Earl of *Argyle* being about to take the Test, as a Commissioner of the Treasury, and having upon command produced a paper bearing the sense in which he took the Test, the preceeding day, and in which he would take the same, as a Commissioner of the Treasury; Upon consideration thereof, it was resolved, that he cannot sit in Council, not having taken the Test, in the sense and meaning of the Act of Parliament, and therefore was removed.

The Earl of Argyle's Explication of the Test when he took it

I Have considered the Test, and I am very desirous to give obedience as far as I can. I'm confident the Parliament never intended to impose contradictory Oaths: Therefore I think no man can explain it but for himself. Accordingly I take it, as far as it is consistent with it self, and the Protestant Religion. And I do declare That I mean not to bind up my self in my station, and in a lawful way, to wish and endeavour any alteration I think to the advantage of Church or State, not repugnant to the Protestant Religion and my Loyalty. And this I understand as a part of my Oath.

But the Earl finding, as hath been narrated, this his Explication, though accepted, and approven by His Highness and Council, the day before, to be this day carped and offended at, and advantages thereupon sought and designed against him, did immediatlie draw up the following Explanation of his Explication, and for his own vindication did first communicate it to some privatlie, and thereafter intended to have offered it at his trial for clearing of his defences.

The Explanation of his Explication.

I Have delayed hitherto to take the Oath, appointed by the Parliament to be taken, betwixt and the first of January next: but now being required, near two moneths sooner to take it, this day peremptourly or to refuse. I have considered the Test, and have seen several Objections moved against it, especially by many of the Orthodox Clergy, notwithstanding whereof, I have endeavoured to satisfie my self with a just explanation, which I here offer, that I may both satisfie my conscience, and obey Your Highness, and Your Lordships commands in taking the Test; though the Act of Parliament do not simply command the thing, but only under a certification, which I could easily submit to, if it were with Your Highness favour, and might be without offence, but I love not to be singular. and I am very desirous to give obedience in this and everything as far as I can, and that which clears me is that I am confident whatever any man may think, or say to the prejudice of this Oath, the Parliament never intended to impose contradictory Oaths; and because their sense, (they being the framers and imposers) is the true sense, and that this Test injoynd is of no privat interpretation, nor are the Kings Statutes to be interpreted but as they bear, and to the intent they are made, Therefore I think no man, that is, no privat person, can explain it for another, to amuse or trouble him with (it may be) mistaken glosses. But every man as he is to take it, so is to explain it for himself and to endeavour to understand it, (notwithstanding all these exceptions) in the Parliaments, which is its true, and genuine sense. I take it therefore notwithstanding any scruple made by any as far as it is consistent with it self, and the Protestant Religion which is wholly in the Parliaments sense, and their true meaning; which [being present] I am sure, was owned by all to be the securing of the Protestant Religion, founded on the word of God, and contained in the Confession of Faith recorded J. 6 p. 1. c. 4. And not out of scruple as if any thing in the Test did import the contrary, but to clear my self from all cavils; as if thereby I were bound up further then the true meaning of the Oath. I do declare that by that part of the Test, that there lyes no obligation on me &c. I mean not to bind up my self, in my station, and in a lawfull way, still disclaiming all unlawful endeavours, to wish, and endeavour any alteration I think, according to my conscience, to the advantage of Church, or State, not repugnant to the Protestant Religion, and my Loyalty and by my Loyalty, I understand no other thing then
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the words plainly bear, to wit the duty and allegiance of all Loyal Subjects and this explanation I understand as a part not of the Test or Act of Parliament, but as a qualifying part of my Oath that I am to swear, and with it I am willing to take the Test, if Your Royal Highness, and Your Lordships allow me, or otherwise, in submission to Your Highness, and the Councils pleasure, I am content to be held as a refuser at present.

The Councils Letter to His Majesty, concerning their having committed the Earl of Argyle.

May it please your Sacred Majesty,

THE last Parliament having made so many and so advantageous Acts, for securing the Protestant Religion, the Imperial Crown of this Kingdom, and your Majesties Sacred Person (whom God Almighty long preserve) and having, for the last, and as the best way for securing all these, appointed a Test to be taken by all who should be entrusted with the Government; which bears expressly, That the same should be taken in the plain and genuine sense and meaning of the words; We were very careful, not to suffer any to take the said Oath or Test, with their own Glosses or Explications: but the Earl of Argyle having, after some delays, come to Council, to take the said Oath, as a Privy-Councillor, spoke some things which were not then heard, nor adverted to, and when his Lordship at his next offering to take it in Council, as one of the Commissioners of your Majesties Treasury, was commanded to take it simply, he refused to do so; but gave in a Paper, shewing the only sense in which he would take it, which Paper we all considered, as that which had in it gross and scandalous Reflections upon that excellent Act of Parliament, making it to contain things contradictory and inconsistent; and thereby depraving your Majesties Laws, misrepresenting your Parliament, and teaching your Subjects to evacuate and disappoint all Laws and Securities that can be enacted for the preservation of the Government; suitable to which his Lordship declares in that Paper, That he means not to bind up himself from making any alterations he shall think fit, for the advantage of Church or State; and which Paper he desires may be looked upon as a part of his Oath, as if he were the Legillator, and able to add a part to the Act of Parliament. Upon serious perusal of which Paper we found our selves obliged to send the said Earl to the Castle of Edinburgh, and to transmit the Paper to your Majesty, being expressly obliged to both these by your Majesties express Laws. And we have commanded your Majesties Advocate to raise a pursuit against the said Earl, for being Author, and having given in the said Paper: And for the further prosecution of all relating to this Affair, we expect your Majesties Commands, which shall be most humbly and faithfully obeyed by

Your Majesties most Humble,

most Faithful,

and most Obedient

Subjects and Servants

Edinburgh, Nov. 8. 1681.

Sic Subscribitur,

Glencairne, Winton, Linlithgow,

Perth, Roxburgh, Ancram.

Airlie, Levingstoun, Jo. Edinburgen:

Ross, Geo. Gordoun, Ch. Maitland,

G. McKenzie, Ja. Foulis, J. Drumond.

November. 15. 1681.

The Kings Answer to the Councils Letter.

C. R.

Most dear, &c. having in one of your Letters directed unto us, of the 8. Instant, received a particular account of the Earl of *Argyle's* refusing to take the *Test* simply, and of your proceedings against him, upon the occasion of his giving in a Paper, shewing the only sense in which he will take it, which had in it gross and scandalous Reflections upon that excellent late Act of our Parliament there, by which the said *Test* was enjoined to be taken; we have now thought fit to let you know, that as we do hereby approve these your Proceedings, particularly your sending the said Earl to our Castle of *Edinburgh*; and your commanding our Advocate to raise a Pursuit against him, for being Author of, and having given in the said Paper; so we do also authorize you to do all things that may concern the further prosecution of all relating to this Affair. Nevertheless, it is our express will and pleasure. That before any Sentence shall be pronounced against him, at the Conclusion of the *Process*, you send us a particular account of what he shall be found guilty of, to the end that, after our being fully informed thereof, we may signify our further pleasure in this matter. For doing whereof, &c.

But as notwithstanding the Councils demanding by their letter His Majestie's allowance for prosecuting the Earl, they before any return caused His Majestie's Advocate exhibit an indictment against him, upon the points of slandering and depraving, as hath been already remarked for after having received His Majestie's answer, the design growes, and they thought fit to order a new indictment containing beside the former Points the crimes of *treason* and *perjury*, which accordingly was exhibit, and is here subjoyned, the difference betwixt the two indictments being only in the particulars above noted.

*The Copy of the Indictment against the Earl of Argyle.**Archibald Earl of Argyle,*

YOU are indicted and accused, That albeit by the Common Law of all well-govern'd Nations, and by the Municipal Law and Acts of Parliament of this Kingdom; and particularly, by the 21. and by the 43d Act, Par. 2 *James 1.* and by the 83d Act, Par. 6. *James 5.* and by the 34th Act Par. 8. *James 6.* and the 134th Act, Par 8 *James 6.* and the 205th Act, Par. 14. *James 6.* All leasing-makers, and tellers of them, are punishable with tinsel of Life and Goods; like as by the 107th Act. Par. 7. *James 1.* it is statuted, That no man interpret the Kings Statutes otherwise than the Statute bears, and to the intent and effect that they were made for, and as the makers of them understood; and who so does in the contrary to be punished at the Kings will: And by the 10th Act, Par. 10. *James 6.* it is statuted That none of His Majesties Subjects presume or take upon him publicly to declare, or privately to speak or write any purpose of reproach or slander of His Majesties Person, Estate or Government, or to deprave his Laws, or Acts of Parliament, or misconstrue his Proceedings, whereby any mistaking may be moved betwixt his Highness, his Nobility, and loving Subjects, in time coming, under pain of death: certifying them

them that does in the contrary, they shall be reputed as seditious and wicked instruments, enemies to his Highness, and to the Commonwealth of this Realm: and the said pain of death shall be executed against them with all rigour, to the example of others: And by the second Act, Sef. 2. Par. 1. Char. 2. it is statuted, That whosoever shall by writing, libelling, remonstrating, exprefs, publish, or declare any words or sentences, to stir up the people to the dislike of His Majesties Prerogative and Supremacy, in causes Ecclesiastik, or of the Government of the Church by Archbishops and Bishops, as it is now settled by Law, is under the pain of being declared incapable to exercise any Office Civil, Ecclesiastik, or Military, within this Kingdom, in any time coming. Like as by the fundamental Laws of this Nation, By the 130th Act, Par 3. *James 6.* it is declared, That none of His Majesties Subjects presume to impugn the Dignity or Authority of the Three Estates, or to procure innovation or diminution of their Power and Authority, under the pain of Treason. And that it is much more Treason in any of His Majesties Subjects, to presume to alter Laws already made, or to make new Laws, or to add any part to any Law by their own Authority, that being to assume the Legislative Power to themselves, with his Majesties highest, and most incommunicable Prerogative. Yet true it is, That albeit His Sacred Majesty did not only bestow on you the said *Archibald Earl of Argyle* those vast Lands, Jurisdictions and Superiorities justly forfeited to His Majesty by the Crimes of your deceased Father; preferring your Family to those who had served His Majesty against it, in the late Rebellion, but also pardoned and remitted to you the Crimes of leasing making and misconstruing His Majesties and his Parliaments proceedings against the very Laws above written, whereof you were found guilty, and condemned to die therefore, by the High Court of Parliament, the 25. of *August*, 1662. And raised you to the Title and Dignity of an Earl, and being a member of all His Majesties Judicatures. Notwithstanding of all these, and many other Favours, you the said *Archibald Earl of Argyle*, Being put by the Lords of His Majesties Privy-Council to take the *Test*, appointed by the Act of the last Parliament to be taken by all persons in publik Trust, you, instead of taking the said *Test*, and swearing the same in the plain genuine sense and meaning of the words, without any equivocation, mental reservation, or evasion whatsoever, you did declare against, and defame the said Act; and having, to the end you might corrupt others by your pernicious sense, drawn the same in a Libel, of which Libel you dispersed and gave abroad Copies, whereby ill impressions were given of the King and Parliaments Proceedings at a time especially when his Majesties Subjects were expecting what submission should be given to the said *Test*; and being desired the next day to take the same, as one of the Commissioners of His Majesties Treasury, you did give in to the Lords of His Majesties Privy-Council and owned twice, in plain judgment before them, the said defamatory Libel against the said *Test* and Act of Parliament; declaring, That you had considered the said *Test*, and was desirous to give obedience as far as you could: whereby you clearly insinuated, that you was not able to give full obedience: In the second Article of which Libel you declare, That you were confident the Parliament never intended to impose contradictory Oaths; thereby to abuse the people with a belief, that the Parliament had been so impious as really and actually to have imposed contradictory Oaths; and so ridiculous, as to have made an act of Parliament (which should be most deliberate of all humane Actions) quite contrary to their own intentions: after which you subsumed contrary to the nature of all Oaths, and to the Acts of Parliament above-cited that every man must explain it for himself, and take it in his own sense; by which not only that excellent Law, and the Oath therein specified, which is intended to be a Fence to the Government both of Church and State, but all other Oaths and Laws shall be rendered altogether uselesse to the Government. If every man take the Oaths imposed by Law in his own sense, then the Oath imposed is to no purpose: for the Legislator cannot be sure that the Oath imposed by him will bind the takers according to the design and intent for which he appointed it: and the Legislative Power is taken from the Imposers, and settled in the taker of the Oath: And so he is allowed to be the Legislator, which is not only an open and violent depraving of His Majesties Laws and Acts of Parliament, but is likewise a settling of the Legislative Power on private Subjects, who are to take such Oaths. In the third Article of that Paper you declare, That you take the *Test* in so far only as it is

*consistent with it self, and the Protestant Religion; by which you maliciously intimate to the people; That the said Oath is inconsistent with it self and with the Protestant Religion, which is not only a down-right depraving of the said Act of Parliament, but is likewise a misconstruing of His Majesties and the Parliaments Proceedings, and misrepresenting them to the people in the highest degree, & in the tenderest points they can be concerned; and implying, that the King and the Parliament have done things inconsistent with the Protestant Religion, for securing of which that Test was particularly intended. In the Fourth Article you do exprelly declare, that you mean not by taking the said Test, to bind up your self from wishing and endeavouring any alteration in a lawful way that you shall think fit, for advancing of Church and State; whereby also it was designed by the said Act of Parliament and Oath, That no man should make any alteration in the Government of Church and State, as it is now established; and that it is the duty of all good Subjects, in humble and quiet manner, to obey the present Government: Yet you not only declare your self, but by your example you invite others to think themselves loosed from that Obligation; and that it is free for them to make any alteration in either, as they shall think fit, concluding your whole Paper with these words (*And this I understand as a part of my Oath*); which is a treasonable invasion upon the Royal Legislative Power as if it were lawful for you to make to your self an Act of Parliament; since he who can make any part of an Act may make the whole, the Power and Authority in both being the same. Of the which Crimes above-mentioned you the said Archibald Earl of Argyle are Actor, Art and Part; which being found by the Affize, you ought to be punished with the pains of Death, for faulture and escheat of Lands and Goods, to the terror of others to commit the like hereafter.*

An Abstract of the severall Acts of Parliament upon which the Indictment against the Earl of Argyle was grounded.

Concerning Raisers of Rumors betwixt the King and his People, Chap 20. 1. Statutes of King Robert 1.

IT is defended and forbidden, That no man be a Conspirator or Inventor of Narrations or Rumors, by the which occasion of discord may arise betwixt the King and his People. And if any such man shall be found, and attainted thereof, incontinent he shall be taken and put in Prison, and there shall be surely kept up, ay and while the King declare his will anent him.

Act 43. of Par. 2. King James 1. March 11. 1424. Leasing-makers for fault Life and Goods.

Item, it is ordained by the King and whole Parliament, that all Leasing makers, and tellers of them, which may engender discord betwixt the King and his People, wherever they may be gotten, shall be challenged by them that power has, and tyne Life and Goods to the King.

Act 83. Par. 6. James 5. Dec. 10. 1540. Of Leasing makers.

Item, Touching the Article of Leasing-makers to the Kings Grace, of his Barons, Great-men and Leidges, and for punishment to be put to them therefore, the Kings Grace, with advice of his three Estates, ratifies and approves the Acts and Statutes made thereupon before, and ordains the same to be put in execution in all Points; and also Statutes and ordains, That if any manner of person makes any evil Information of his Highness to his Barons and Leidges, that they shall be punished in such manner, and by the same punishment as they that make Leasings to his Grace of his Lords, Barons, and Leidges.

Act 134. Par. 8. James 6. May 22. 1584. Anent Slandereres of the King, his Progenitors, Estate and Realm.

FOrasmuch as it is understood to our Sovereign Lord, and his Three Estates assembled in this present Parliament, what great harm and inconveniency has fallen in this Realm, chiefly since the beginning of the Civil Troubles occurred in the time of His Highness's minority, through the wicked and licentious, publick and private speeches, and untrue Calumnies of divers of his Subjects, to the disdain, contempt and reproach of His Majesty, his Council and Proceedings, and to the dishonour and prejudice of His Highness, his Parents, Progenitors and Estate, stirring up His Highness's Subjects thereby to misliking, sedition, unquietness, and to cast off their due obedience to His Majesty, to their evident peril, ruin and destruction; His Highness continuing always in love and clemency toward all his good Subjects, and most willing to seek the safety and preservation of them all, which wilfully, needlessly, and upon plain malice, after His Highness's mercy and pardon oftentimes afore granted, has procured themselves, by their treasonable deeds, to be cut off, as corrupt Members of this Commonwealth. Therefore it is statut and ordained by our Sovereign Lord, and his Three Estates in this present Parliament, that none of his Subjects of whatsoever Function, Degree or Quality, in time coming shall presume, or take upon hand, privately or publickly, in Sermons, Declamations, and familiar Conferences, to utter any false, slanderous, or untrue speeches, to the disdain, reproach and contempt of His Majesty, his Council and Proceedings, or to the dishonour, hurt or prejudice of His Highness, his Parents and Progenitors, or to meddle in the Affairs of His Highness, and his Estate present, by-gone, and in time coming, under the pains contained in the Acts of Parliament anent makers and tellers of Leesings, certifying them that shall be tryed contraveners thereof, or that hear such slanderous speeches, and reports not the same with diligence, the said pain shall be executed against them with all rigour, in example of others.

Act 205. Par. 14 King James 6. June 8. 1594. Anent Leasing-makers, and Authors of Slanders.

Our Sovereign Lord, with advice of his Estates in this present Parliament, ratifies, approves, and for His Highness and Successors, perpetually confirms the Act made by his Noble Progenitors, King James the First, of Worthy Memory, against Leasing-makers, the Act made by King James the Second, entitled *Against Leasing-makers, and tellers of them*; the Act made by King James the Fifth, entitled, *Of Leasing-makers*; and the Act made by his Highness's self, with advice of his Estates in Parliament, upon the 22 day of May, 1584. entitled, *For the punishment of the Authors of Slanders and untrue Calumnies against the Kings Majesty, his Council and Proceedings, to the dishonour and prejudice of His Highness, his Parents, Progenitors, Crown and Estate*; as also the Act made in His Highness's Parliament holden at Linlithgow, upon the 10 of December, 1585. entitled, *Against the Authors of slanderous speeches or Writs*; and statutes and ordains all the said Acts to be published of new, and to be put in execution in time coming, with this addition, That whoever hears the said Leasings, Calumnies or slanderous Speeches or Writs to be made, and apprehends not the Authors thereof, if it lyes in his power, and reveals not the same to His Highness, or one of his Privy-Council or to the Sheriff, Steward or Bayliff of the Shire, Stewards in Regality or Royalty, or to the Provost, or any of the Bayliffs within Burgh, by whom the same may come to the knowledg of his Highness, or his said Privy-Council, wherethrough the said Leasing-makers, and Authors of slanderous Speeches may be called, tryed and punished according to the said Acts: The hearer, and not apprehender, [if it lye in his power] and concealer, and not revealer of the said Leasing-makers, and Authors of the said slanderous Speeches or Writs, shall incur the like pain and punishment as the Principal Offender.

Act

Act 107. Par. 7. King James 1. March 1. 1427. That none interpret the Kings Statutes wrongously.

Item, The King by deliverance of Council, by manner of Statute, forbids, That no man interpret his Statutes otherwise than the Statutes bear, and to the intent and effect that they were made for and as the maker of them understood: and whofo does in the contrary, shall be punished at the Kings will.

Act 10. Par. 10. King James 6. Dec. 10. 1585. Authors of slanderous Speeches or Writs should be punished to the death.

*I*T is statuted and ordained by our Sovereign Lord and Three Estates, That all his Highness's Subjects content themselves in quietness and dutiful obedience to his Highness and his Authority; and that none of them presume, or take upon hand publickly to declaim, or privately to speak or write any purpose of reproach or slander of His Majesties Person, Estate or Government, or to deprave his Laws and Acts of Parliament, or misconstrue his Proceedings, whereby any misliking may be moved betwixt his Highness and his Nobility, and loving Subjects in time coming, under the pain of death; certifying them that do in the contrary they shall be reputed as seditious and wicked instruments, enemies to his Highness and the Commonwealth of this Realm: and the said pain of death shall be executed upon them with all rigour, in example of others.

Act for preservation of His Majesties Person, Authority, and Government, May 1602.

— And further it is by His Majesty and Estates of Parliament declared, statuted and enacted That if any person or persons shall by writing, printing, praying, preaching, libelling, remonstrating, or by any malicious or advised speaking, express, publish or declare any words or sentences, to stir up the people to the hatred or dislike of His Majesties Royal Prerogative and Supremacy, in Causes Ecclesiastical, or of the Government of the Church by Archbishops and Bishops, as it is now settled by Law — That every such person or persons so offending, and being Legally Convicted thereof are hereby declared incapable to enjoy or exercise any place or employment, Civil, Ecclesiastical, or Military, within this Church and Kingdom, and shall be liable to such further pains as are due by the Law in such Cases.

Act 130. Par. 8. James 6. May 22. 1584. Anent the Authority of the Three Estates of Parliament.

*T*He Kings Majesty considering the Honour and the Authority of his Supreme Court of Parliament, continued past all memory of man unto their days, as constituted upon the free Votes of the Three Estates of this ancient Kingdom, by whom the same, under God, has ever been upholden, rebellious and traitorous Subjects punished, the good and faithful preserved and maintained, and the Laws and Acts of Parliament (by which all men are governed) made and established. And finding the Power, Dignity and Authority of the said Court of Parliament, of late years, called in some doubt, at least, some curiously travelling to have introduced some Innovation thereanent; His Majesties firm will and mind always being as it is yet, That the Honour, Authority, and Dignity of his said Three Estates shall stand and continue in their own Integrity, according to the ancient and laudable custom by-gone, without any alteration or diminution: Therefore it is statuted and ordained by our said Sovereign Lord, and his said Three Estates in this present Parliament, That none of his Leidges or Subjects presume, or take upon hand to impugn the Dignity and Authority of the said Three Estates, or to seek or procure the innovation or diminution of the power and Authority of the same Three Estates, or any of them, in time coming, under the pain of Treason.

*The Earl of Argyle's first Petition for Advocats, or
Council to be allow'd him.*

To his Royal Highness, His Majesties High Commissioner,
and to the Right Honourable the Lords of His Majesties
Privy - Council.

The Humble Petition of Archibald Earl of Argyle.

SHEWETH,

That your Petitioner being Criminally Indicted before the Lords Commissioners of Justiciary, at the instance of His Majesties Advocate, for Crimes of an high Nature. And whereas in this Case no Advocate will readily plead for the Petitioner, unless they have your Royal Highness's, and Lordships special Licence and Warrant to that Effect, which is usual in the like Cases

It is therefore humbly desired, that Your Royal Highness, and Lordships, would give special Order and Warrant to Sir George Lockhart, his ordinary Advocate, to consult and plead for him in the foresaid Criminal Process, without incurring any hazard upon that account and your Petitioner shall ever pray.

Edenburgh, Novemb. 22. 1681.

*The Councils Answer to the Earl of Argyl's first Petition,
about his having Advocates allowed him.*

HIS Royal Highness, his Majesties High Commissioner, and Lords of Privy-Council, do refuse the desire of the above-written Bill, but allows any Lawyers the Petitioners shall employ, to consult and plead for him in the Process of Treason, and other Crimes, to be pursued against him at the instance of His Majesties Advocate.

Extr. By me,

Will. Paterson.

*The Earl of Argyl's second Petition for Council to be
allow'd him.*

To His Royal Highness, His Majesties High Commissioner,
and to the Right Honourable the Lords of His Majesties
Privy - Council:

The humble Petition of Archibald Earl of Argyle.

SHEWETH.

That your Petitioner having given in a former Petition, humbly representing, That he being Criminally Indicted before the Lords Commissioners of Justiciary, at the instance of His Majesties Advocate, for Crimes of an high Nature: And therefore desiring that your Royal Highness, and Lordships, would give spe-

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cial Warrant to Sir George Lockhart, to consult and plead for him: Whereupon your Royal Highness, and Lordships, did allow the Petitioner to make use of such Advocates as he should think fit to call. Accordingly your Petitioner having desired Sir George Lockhart to consult and plead for him, he hath as yet refused your Petitioner. And by the 11. Parliament of King James the VI. Cap. 38. As it is the undeniable priviledg of all Subjects, accused for any Crimes, to have liberty to provide themselves of Advocates, to defend their Lives, Honour, and Lands, against whatsoever accusation; so the same Priviledg is not only by Parliament 11. King James the VI. Cap. 90. farther asserted and confirmed, but also it is declared, That in case the Advocates refuse the Judges are to compel them, lest the party accused should be prejudged: And this being an affair of great importance to your Petitioner, and Sir George Lockhart having been not only still his ordinary Advocate, but also by his constant converse with him is best known to your Petitioners Principles; and of whose eminent abilities and fidelity your Petitioner (as many others have) hath had special proof all along in his Concerns, and hath such singular confidence in him that he is most necessary to your Petitioner at this occasion.

May it therefore please Your Royal Highness and Lordships to interpose your Authority, by giving a special Order and Warrant to the said Sir George Lockhart, to consult and plead for him in the said Criminal Process, conform to the tenor of the said Acts of Parliament, and constant known practice in the like Cases, which was never refused to any Subject of the meanest quality, even to the greatest Criminals. And Your Royal Highness's, and Lordships Answer is humbly craved.

Edenburgh, Novemb. 24. 1681.

The Councils Answer to the Earl of Argyle's second Petition.

HIS Royal Highness, His Majesties High Commissioner, and Lords of Privy Council, having considered the foresaid Petition, do adhere to their former Order, allowing Advocates to appear for the Petitioner in the Process foresaid. Extr. By me,

Will. Paterson.

The Earl of Argyle's Letter of Attorney, constituting Alexander Dunbar his Procurator, for requiring Sir George Lockhart to plead for him.

WE Archibald Earl of Argyle do hereby substitute, constitute and ordain Alexander Dunbar, our Servitor, to be our Procurator, to pass and require Sir George Lockhart Advocate to consult, and plead for us in the Criminal Process intended against us, at the instance of His Majesties Advocate; and to compare with us, before the Lords Commissioners of Justiciary, upon the 12th of December next, conform to an Act of Council, dated the 22d of Novemb. instant, allowing any Lawyers that we should employ, to consult and plead for us in the said Process, and to another Act of Council of the 24th of Novemb. instant, relative to the former, and conform to the Acts of Parliaments. In witness whereof, we have Subscribed these Presents, at Edenburgh-Castle, Nov 26. 1681. before these Witnesses, Duncan Campbell Servitor to James Glen Stationer in Edenburgh, and John Thom, Merchant in the said Burgh.

A R G Y L E.

Duncan Campbell,

John Thom,

} Witnesses.

An

An Instrument whereby the Earl of Argyle required Sir George Lockhart to appear and plead for him.

Apud Edenburgum vigesimo sexto die Mensis Novembris, Anno Domini millesimo sexcentesimo octuagesimo primo, & Anno Regni Car. 2. Regis trigesimo tertio.

THe which day, in presence of Me Notar publik, and Witnesses under-subscribed, compared personally *Alexander Dunbar*, Servitor to a Noble Earl, *Archibald Earl of Argyle*, as Procurator, and in name of the said Earl, conform to a Procuration subscribed by the said Earl at the Castle of *Edinburgh*, on the twenty first day of *November*, 1681. making and constituting the said *Alexander Dunbar* his Procurator, to the effect under-written; and past to the personal presence of Sir *George Lockhart* Advocate, in his own lodging in *Edinburgh*, having and holding in his hands an Act of his Majesties Privy Council, of the date the 22 of *November*, 1681. instant, proceeding upon a Petition given in by the said Earl of *Argyle*, to the said Lords, shewing, That he being Criminally indicted before the Lords Commissioners of Justiciary, at the instance of His Majesties Advocate, for Crimes of an high Nature, and whereas in that case no Advocates would readily plead for the said Earl, unless they had his Royal Highness's, and their Lordships special Licence and Warrant to that effect, which is usual in the like Cases: And by the said Petition humbly supplicated, That his Highness, and the Council would give special Order and Command to the said Sir *George Lockhart*, the said Earl's ordinary Advocate, to consult and plead for him in the foresaid Criminal Process, without incurring any hazard upon that account. His Royal Highness, and Lords of the said Privy-Council, did refuse the desire of the said Petition but allowed any Lawyers the Petitioner should employ, to consult and plead for him in the Process of Treason, and other Crimes to be pursued against him, at the instance of His Majesties Advocate. And also the said *Alexander Dunbar* having and holding in his hands another Act of the said Lords of Privy-Council, of the date the 24th of the said moneth, relative to, and narrating the foresaid first Act, and Proceeding upon another supplication given in by the said Earl, to the said Lords, craving, That his Royal Highness, and the said Lords, would interpose their Authority by giving a positive and special Order and Warrant to the said Sir *George Lockhart*, to consult and plead with him in the foresaid Criminal Process, conform to the tenor of the Acts of Parliament mentioned and particularized in the said Petition, and frequent and known practice in the like cases, which was never refused to any Subjects of the meanest quality. His Royal Highness, and Lords of Privy-Council, having considered the foresaid Petition, did by the said Act adhere to their former Order, allowing Advocates to appear for the said Earl in the Process foresaid, as the said Acts bear; and produced the said Acts and Procuratory foresaid to the said Sir *George Lockhart*, who took the same in his hands, and read them over successive; and after reading thereof, the said *Alexander Dunbar* Procurator, and in name and behalf foresaid, solemnly required the said Sir *George Lockhart*, as the said Noble Earl's ordinary Advocate, and as a Lawyer and Advocate, upon the said Earl's reasonable expence, to consult and advise the said Earl's said Process at any time and place the said Sir *George* should appoint to meet thereupon, conform to the foresaid Two Acts of Council, and Acts of Parliament therein mentioned, appointing Advocates to consult in such matters: Which the said Sir *George Lockhart* altogether refused: Whereupon the said *Alexander Dunbar*, as Procurator, and in Name foresaid, asked and took Instruments, one or more, in the hands of me Notary publik under-subscribed. And these things were done within the said Sir *George Lockhart's* Lodging, on the South side of the Street of *Edinburgh*, in the Lane-Mercat, within the Dining-room of the said Lodging, betwixt Four and Five hours in the Afternoon, Day, Moneth, Year, Place, and of His Majesties Reign, respective foresaid, before *Robert Dickson*, and *John Lestly*, Servitors to *John Campbell*, Writer to His Majesties Signet, and *Dowgall Mac. Alester*, Messenger in *Edinburgh*, with divers others, called and required to the Premisses

Ita esse Ego Johannes Broun, Notarius publicus, in Præmissis requisitus, Attestor Testantibus his meis signa & subscriptione manualibus solitis & consuetis.

Broun.

Robert Dickson,
Dowgall, Mac. Alester, } Witnesses.
John Lestly,

Decemb. 5. 1682.

*The Opinion of divers Lawyers concerning the Case of
the Earl of Argyle.*

WE have considered the Criminal Letters, raised at the instance of His Majesties Advocate, against the Earl of *Argyle*, with the Acts of Parliament contained and narrated in the same Criminal Letters, and have compared the same with a Paper, or Explication, which is libelled to have been given in by the Earl to the Lords of His Majesties Privy - Council, and owned by him, as the sense and explication in which he did take the Oath imposed by the late Act of Parliament. Which Paper is of this tenor: *I have considered the Test; and am very desirous to give obedience as far as I can, &c.* And having likewise considered that the Earl after he had taken the Oath with the explication and sense then put upon it, it was acquiesced to by the Lords of Privy - Council, and he allowed to take his Place, and to sit and vote. And that, before the Earl's taking of the Oath, there were several Papers spread abroad, containing Objections, and alledging inconsistencies and contradictions in the Oath, and some thereof were presented by Synods and Presbyteries of the Orthodox Clergy, to some of the Bishops of the Church. It is our humble Opinion, that seeing the Earls design and meaning in offering the said Explication was allennarly for the clearing of his own Conscience, and upon no factious or seditious design; and that the matter and import of the said Paper is no contradiction of the Laws and Acts of Parliament, It doth not at all import any of the Crimes libelled against him, *viz.* Treason, Leasing-making, depraving of His Majesties Laws, or the Crime of Perjury; but that the Glosses and Inferences put by the Libel upon the said Paper are altogether strained and unwarrantable, and inconsistent with the Earls true design, and the sincerity of his meaning and intention, in making of the said Explication.

Wednesday the 12. of December. the day of compearance assigned to the Earl, being now come, he was brought by a guard of Souldiers from the Castle to the place appointed for the trial, and the justice Court being met and fenced, the Earl, now Marques, of *Queensberry*, then Justice General, the Lords *Nairn*, *Collingtoun*, *Forret*, *Newtoun* and *Hirkhouse*, the Lords of Justitiary sitting in judgment, and the other formalities also performed, the indictment above set down *Num 24.* was read, and the Earl spoke as followes.

*The Earl of Argyle's Speech to the Lord Justice General,
and the Lords of the Justitiary, after he had been arraigned,
and his Indictment read.*

My Lord Justice General, &c.

I Look upon it as the undeniable priviledg of the meanest Subject to explain his own words in the most benign sense: and even when persons are under an ill Character, the misconstruction of words in themselves not ill can only reach a presumption or aggravation but not any more.

But it is strange to alledg, as well as, I hope, impossible. to make any that know me believe, that I could intend anything but what was honest
and

and honourable, suitable to the Principles of my Religion and Loyalty, tho I did not explain my self at all.

My Lord, I pray you be not offended, that I take up a little of your time, to tell you, I have from my Youth made it my business to serve His Majesty faithfully, and have constantly, to my power, appeared in his Service; especially in all times of difficulty, and have never joyned, nor complied with any Interest or Party, contrary to His Majesties Authority, and have all along served him in his own way, without a frown from His Majesty these Thirty years.

As soon as I passed the Schools and Colledges, I went to travel to *France* and *Italy*, and was abroad 1647, 1648, and till the end of 1649.

My first appearance in the world was to serve His Majesty as Collonel of his Foot-Guards. And tho at that time all the Commissions were given by the then Parliament, yet I would not serve without a Commission from His Majesty, which I have still the Honour to have by me.

After the misfortune of *Worcester*, I continued in Arms for His Majesties Service, when *Scotland* was over-run with the Usurpers, and was alone with some of my Friends in Arms in the Year 1652. and did then keep up some appearance of opposition to them: And General Major *Dean* coming to *Argyleshire*, and planting several Garisons he no sooner went away but we fell upon the Garisons he had left, and in one day took two of them, and cut off a considerable part of a third, and carried away in all about Three hundred Prisoners: And in the end of that year, I sent Captain *Shaw* to His Majesty, with my humble Opinion, how the War might be carried on; who returned to me with Instructions and Orders which I have yet lying by me.

After which, I joyned with thote His Majesty did Commissionate, and stood out till the last, that the Earl of *Middleton*, His Majesties Lieutenant General, gave me Orders to capitulate, vvhich I did vvithout any other Engagements to the Rebels but allowving persons to give bale for my living peaceably: and did at my capitulating relieve several Prisoners by exchange, vvhereof my Lord *Granard*, out of the Castle of *Edenburgh*, vvvas one.

It is notarly knowvn, that I vvvas forefaulted by the Usurpers, vvho vvvere so jealous of me that, contrary to their Faith, vvithin Eight Monerhs after my Capitulation, upon pretence I keep'd Horses above the value, they seized on me, and keepled me in one Prison after another, till His Majesties happy Restauration, and this only because I vvould not engage not to serve His Majesty, tho there vvvas no Oath required.

I do with all gratitude acknowledg His Majesties Goodness, Bounty and Royal Favours to me, when I was pursued before the Parliament in the Year 1662. His Majesty was graciously pleased not to send me here in any opprobrious way, but upon a bare verbal Paroll. Upon which I came down poste, and presented my self a Four thnight before the day. Notwithstanding whereof I was immediately clapt up in the Castle, but having satisfied His Majesty, at that time, of my entire Loyalty, I did not offer to plead by Advocates. And His Majesty was not only pleased to pardon my Life, and to restore me to a Title and Fortune, but to put me in trust in his Service, in the most eminent Judicatories of this Kingdom, and to heap Favours upon me, far beyond what ever I did or can deserve: tho I

hope His Majesty hath always found me faithful and thankful, and ready to bestow all I have, or can have, for his Service. And I hope never hath had nor ever shall have ground to repent any Favour he hath done me. And if I were now really guilty of the Crimes libelled, I should think myself a great Villain.

The next occasion I had to shew my particular zeal to His Majesties Service was in *Anno* 1666. when the insurrection was made that was repressed at *Pentland-Hills*. At the very first, the intercourse betwixt this place and me was stoppt, so that I had neither Intelligence nor Orders from the Council, nor from the General; but upon a Letter from the now Archbishop of *St. Andrews*, telling me there was a Rebellion like to be in the three Kingdoms, and bidding me beware of *Ireland* and *Kintyre*, I brought together about Two thousand men: I seized all the Gentlemen in *Kintyre* that had not taken the Declaration, tho I found them peaceable. And I sent a Gentleman to General *Dalziel*, to receive his Orders, who came to him just as they were going to the Action at *Pentland*, and vvas with him in it; and I kept my Men together till his return. And when I met with considerable trouble from my Neighbours, rebelliously in Arms, and had Commissions both on publik, and private Accounts, have I not carried dutifully to His Majesty, and done what was commanded with a just moderation, which I can prove under the hands of my enemies, and by many infallible demonstrations?

Pardon me a few words: Did I not in this present Parliament shew my readiness to serve His Majesty and the Royal Family, in asserting vigorously the lineal legal Succession of the Crown, and had a care to have it expressed in the Commissions of the Shires and Burghs I had interest in? Was I not for offering proper Supplies to His Majesty and his Successor? And did I not concur to bind the Landlords for their Tenants, altho I was mainly concerned? And have I not always kept my Tenants in obedience to His Majesty?

I say all this, not to arrogate any thing for doing what was my Honour and Duty to His Majesty; but if after all this, upon no other ground but words that were spoken in absolute innocence, and without the least design, except for clearing my own Conscience, and that are not capable of the ill sense wrested from them by the Libel, I should be further troubled, what assurance can any of the greatest Quality, Trust, or Innocence, have that they are secure? especially considering, that so many Scruples have been started, as all know, not only by many of the Orthodox Clergy, but by whole Presbyteries, Synods, and some Bishops, which were thought so considerable, that an eminent Bishop took the pains to write a Treatise, that was read over in Council, and allowed to be Printed, and a Copy given to me, vvhich contains all the expressions I am charged for, and many more that may be stretched to a worse sense.

Have I not shewed my zeal to all the ends of the *Test*? How then can it be imagined that I have any *sinister* design in any thing that I have said? If I had done any thing contrary to it all the course of my life, which I hope shall not be found, yet one act might pretend to be excused by a habit. But nothing being questioned but the sense of words misconstrued to the greatest height, and stretched to imaginary insinuations, quite contrary to my scope and design, and so far contrary, not only to my sense, but my principles, interest, and duty, That I hope my Lord Advocate vwill

will think he hath gone too far on in this Proceſs, and ſay plainly what he knows to be truth by his acquaintance with me, both in publik and private; viz. That I am neither Papiſt nor Fanatik, but truly loyal in my principles and practices.

The hearing of this Libel would trouble me beyond moſt of the ſufferings of my Life if my innocence did not ſupport me, and the hopes of being vindicated of this and other Calumnies before this publik and Noble Auditory.

I leave my Defences to theſe Gentlemen that plead for me, they know my innocence, and how groundleſs that Libel is.

I ſhall only ſay, As my Life hath moſt of it been ſpent in ſerving and ſuffering for his Maſteſty, ſo whatever be the event of this Proceſs, I reſolve, while I breath, to be loyal and faithful to His Maſteſty. And whether I live publikly or in obſcurity, my head, my heart nor my hand, ſhall never be wanting where I can be uſeful to His Maſteſties Service. And while I live, and when I die, I ſhall pray, That God Almighty would bleſs His Maſteſty with a long, happy, and prosperous Reign; and that the lineal legal ſucceſſors of the Crown may continue Monarchs of all His Maſteſties Dominions, and be Defenders of the True Primitive, Chriſtian, Apoſtolik, Catholik, Proteſtant Religion, while Sun and Moon endure.

God ſave the King.

The Kings own Letter to this Nobleman when he was Lord Lorn.

Collogne, December 20. 1654.

My Lord Lorn,

I Am very glad to hear from Middleton, what affection and zeal you ſhow to my Service, how conſtantly you adhere to him in all his diſtreſſes, and what good Service you have performed upon the Rebels. I aſſure you, you ſhall find me very juſt, and kind to you, in rewarding what you have done and ſuffered for me; and I hope you will have more Credit and Power with thoſe of your Kindred, and Dependants upon your Family, to engage them with you for me, than any body elſe can have to ſeduce them againſt me; and I ſhall look upon all thoſe who ſhall reſuſe to follow you as unworthy of any protection hereafter from me, which you will let them know. This honeſt Bearer, M --- will form you of my Condition and Purpoſes, to whom you will give Credit; and he will tell you, That I am very much.

Your very affectionate Friend,

C. R.

General

*General Middleton's Order to the Earl of Argyle, who
was then Lord Lorn, for capitulating with the English,
wherein he largely expresseth his Worth and Loyalty.*

*John Middleton, Lieutenant General, next and immediate under His
Majesty, and Commander in chief of all the Forces raised, and to
be raised, within the King of Scotland.*

Seeing the Lord Lorn hath given so singular proofs of clear and perfect Loyalty to the Kings Majesty, and of pure and constant affection to the good of His Majesties Affairs, as never hitherto to have any ways complied with the Enemy, and to have been principally instrumental in the enlivening of this late War, and one of the chief and first movers in it, and hath readily, chearfully, and gallantly engaged, and resolutely and constantly continued active in it, notwithstanding the many powerful dissuasions, discouragements, and oppositions he hath met withal from divers hands, and hath in the carrying on of the Service shewn such signal Fidelity, Integrity, Generosity, Prudence, Courage, and Conduct, and such high Vertue, Industry, and Ability, as are suitable to the Dignity of his Noble Family, and the Trust His Majesty reposed in him, and hath not only stood out against all temptations and enticements, but hath most nobly crossed and repressed designs and attempts of deserting the Service, and persisted loyally and firmly in it to the very last, through excessive toil and many great difficulties, misregarding all personal inconveniences, and chusing the loss of Friends, Fortune, and all private Concernments, and to endure the utmost extremities rather than to swerve in the least from his Duty, or taint his Reputation with the meanest shadow of disloyalty and dishonour. I do therefore hereby testify and declare, That I am perfectly satisfied with his whole Deportments in relation to the Enemy, and this late War; and do highly approve them, as being not only above all I can express of their worth, but almost beyond all parallel. And I do withall hereby both allow, and most earnestly desire, and wish him, to lose no time in taking such course for his safety and preservation by Treaty & Agreement, or Capitulation, as he shall judge most fit and expedient for the good of his Person, Family, and Estate, since inevitable and invincible necessity hath forced us to lay aside this War. And I can now no other way express my respects to him, nor contribute my endeavour to do him Honour and Service. In testimony whereof I have signed and sealed these Presents at *Dunveagave*, the last day of *March*, 1655.

JOHN MIDDLETON

*Another Letter from the Earl of Middleton,
to the same purpose.*

Paris, April 17. 1655.

My Noble Lord,

I Am hopeful, that the Bearer of this Letter will be found one who has been a most faithful Servant to your Lordship, and my kind Friend, and a sharer in my Troubles. Indeed I have been strengthened by him to support and overcome many difficulties. He will acquaint you with what hath past, which truly was strange to both of us, but your own Re-encounters will lessen them. My Lord, I shall be faithful in giving you that Character which your Worth and Merit may justly challenge. I profess it is, next to the ruine of the Service, one of my chiefest Regrets that I could not possibly wait upon you before my going from *Scotland*, that I might have settled a way of Correspondence with you, and that your Lordship might have understood me better

better than yet you do; I should have been plain in every thing, and indeed have made your Lordship my Confessor: and I am hopeful the Bearer will say somewhat for me, and I doubt not but your Lordship will trust him. If it shall please God to bring me safe from beyond Sea, your Lordship shall hear from me by a sure hand Sir Ro M. will tell you a way of corresponding. So that I shall say no more at present, but that I am without possibility of change,

My Noble Lord,

*Your Lordships most Faithful,
and most Humble Servant,*

JO. MIDDLETON.

*A Letter from the Earl of Glencairn, testifying his
esteem for this Noble Person, and the sense he had of his loyalty
to the King, when servv had the Courage to ovvn him*

My Lord,

LEst it may be my misfortune, in all these great Revolutions, to be misrepresented to your Lordship, as a person unworthy of your favourable Opinion (an Artifice very frequent in these times) I did take occasion to call for a Friend and Servant of yours, the Laird of *Spanie*, on whose discretion I did adventure to lay forth my hearts desire, to obviate in the bud any of these misunderstandings. Your Lordships true worth and zeal to your Countries happiness, being so well known to me and confirmed by our late suffering acquaintance: And now finding how much it may conduce to these great ends we all wish that a perfect Unity may be amongst all good and honest-hearted *Scotchmen*, tho there be few more insignificant than my self; yet my zeal for those ends obliges me to say, that if your Lordships health and affairs could have permitted you to have been at *Edenburgh* in these late times, you would have seen a great inclination and desire amongst all here of a perfect Unity, and of a mutual respect to your Person, as of chief eminence and worth. And I here shall set it under my Hand, to witness against all my Informers, that none did with more passion, nor shall with more continued zeal, witness themselves to be true Honourers of you than he who desires infinitely to be esteemed.

My Lord,

Your most Humble Servant,

GLENCAIRN.

*What I cannot well writ e I hope this discreet Gentleman will tell
you in my Name: and I shall only beg leave to say, that I am your most
Noble Ladies Humble Servant.*

After the reading of which order and letters, which yet the Court refused to record, The Earl's Advocat or Council Sir *George Lockhart* said in his defence as follovvcs.

*Sir George Lockhart's Argument and Plea
for the Earl of Argyle.*

SIR *George Lockhart* for the Earl of *Argyle* alledgeth, That the Libel is not Relevant, and whereupon he ought to be put to the knowledg of an Inquest. For,

It is alledged in the general, That all Criminal Libels, whereupon any persons Life, Estate, and Reputation, can be drawn in question, should be founded upon clear, positive, and exprels Acts of Parliament. and the matter of Fact, which is libelled to be the Contravention of those Laws, should be plain, clear, and direct Contraventions of the same, and not argued by way of Implications and Inferences. Whereas in this Case, neither the Acts of Parliament, founded upon, and libelled, can be in the least the foundation of this Libel: nor is the Explication which is pretended to be made by the Pannel at the time of the taking of his Oath (if considered,) any Contravention of those Laws; which being premised, and the Pannel denying the Libel, as to the whole Articles and Points therein contained; it is alledged in special:

That the Libel, in so far as it is founded upon the 2^{ist} Chap. Stat. 1. Robert 1. and upon 83^d Act; Par. 6. James 5. the 43^d Act, Par. 2. James 1. and upon the 83^d Act, Par. 10. James 5. and upon 84th Act, Par. 8. James 6. and upon the 10th Act, Par. 10. James 6. and upon the 2^d Act. Par. 1. Sef. 2. of His Sacred Majesty; and inferring thereupon, That the Pannel, by the pretended Explication given in by him to the Lords of His Majesties Privy-Council, as the sense of the Oath he had taken, doth commit the Crime of Leasing-making, and depraving His Majesties Laws: The Inference and Subsumption is most unwarrantable, and the Pannel, tho any such thing were acknowledged or proved, can never be found guilty of contraveening these Acts of Parliament. In respect it is evident, upon perusal and consideration of these Acts of Parliament, that they only concern the case of Leasing-making, tending to Sedition, and to beget Discord betwixt His Majesty and His Subjects, and the dislike of His Majesties Government, and the reproach of the same. And the said Laws and Acts of Parliament were never understood or libelled upon, in any other Sense. And all the former Acts of Parliament, which relate to the crime of Leasing-making in general terms, and under the qualification foresaid, as tending to beget discord betwixt His Majesty and his Subjects, are explained and fully declared, as to what is the true meaning and import thereof, by the 134th Act, Par. 8. James 6. which relates to the same Crime of Leasing-making, and which is expressly described in these terms, To be wicked and licentious, publik and private Speeches, and untrue Calumnies to the disdain and contempt of His Majesties Council and Proceedings, and to the dishonour and prejudice of his Highness and his Estate, stirring up his Highness's Subjects to misliking, and Sedition, and unquietness which being the true sense and import of the Acts of Parliament made against Leasing-makers, there is nothing can be inferred from the Pannels alledged Explication, which can be wrested or construed to be a Contravention of these Laws: In respect,

First It is known by the whole tenor of his Life, and graciously acknowledged by His Sacred Majesty, by a Letter under His Royal Hand, that the Pannel did ever most zealously, vigorously, and faithfully promote and carry on His Majesties Service and Interest, even in the worst and most difficult times: Which is also acknowledged by a Pats under the Earl of *Middleton's* hand, who had then a special Commission from His Majesty, for carrying on His Majesties Service in this Kingdom, as Lieutenant General under His Majesty; and by a Letter under the Earl's hand, of the date --- both which do contain high expressions of the Pannels Loyalty, and of the great Services he had performed for His Majesties Interest. And His Majesty, as being conscious thereof, and perfectly knowing the Pannels Loyalty, and his zeal, and faithfulness for his Service, did think fit to entrust the Pannel in Offices and Capacities of the greatest trust of the Kingdom. And it is a just and rational presumption, which all Law makes and infers, That the words and expressions of persons, who by the tenor and course of their Lives have expressed their Duty and Loyalty to His Majesties Interest,

est, are ever to be interpreted and understood *in meliorem partem*. And by way of Implication and Inference, to conclud and infer crimes from the same, which the user of such words and expressions never mean'd nor designed, is both unreasonable and unjust.

2. As the foresaid Acts of Parliament made against Leasing-makers, and depravers of His Majesties Laws, only proceed in the terms foresaid, where the words and speeches are plain, tending to beget discord between the King and his Subjects, and to the reproach and dislike of his Government; and when the same are spoke and vented in a subdalous, pernicious, and fraudulent manner: So they never were, nor can be understood to proceed in the case of a person offering in the presence of a publik iudicature (whereof he had the honour to be a Member) his sincere and plain meaning and apprehension of what he conceived to be the true sense of the Act of Parliament imposing and enjoining the *Test*: There being nothing more opposite to the Acts of Parliament made against Leasing-making, and venting and spreading abroad the same upon seditious designs, than the foresaid plain and open declaration of his sense and apprehension, what was the meaning of the said Act of Parliament. And it is of no import to inter any crime and much less any of the crimes libelled, albeit the Pannel had erred and mistaken in his apprehension of the Act of Parliament. And it were a strange extension of the Act of Parliament made against Leasing-makers, requiring the qualifications foresaid & the Acts against depraving His Majesties Laws, to make the Pannel, or any other person guilty upon the mistakes and misapprehensions of the sense of the Laws, wherein men may mistake and differ very much, and even eminent Lawyers and Judges. So that the Acts of Parliament against Leasing-making, and depraving His Majesties Laws; can only be understood in the exprels terms and qualifications foresaid. Like as it neither is libelled, nor can be proven, that the Pannel, before he was called and required by the Lords of His Majesties Privy-council to take the Oath, did ever, by word or practice, use any reproachful speeches of the said Act of Parliament, or of His Majesties Government: But being required to take the Oath, he did humbly, with all submission declare what he apprehended to be the sense of the Act of the Parliament, enjoining the *Test*, and in what sense he had freedom to take the same.

3. The Act of Parliament enjoining the *Test* does not enjoin the same to be taken by all persons whatsoever, but only prescribes it as a qualification without which persons could not assume or continue to act in publik Trust: Which bein an Oath to be taken by so solemn an invocation of the Name of Almighty God, it is not only allowable by the Laws and customs of all Nations, and the Opinion of all Divines, ad Casuists, Popish or Protestant, but also commended, that where a Party has any scrupulosity, or unclearness in his conscience, as to the matter of the Oath, that he should exhibit and declare the sense and meaning in which he is willing and able to take the Oath. And it is not at all material whether the scruples of a mans conscience, in the matter of an Oath, be in themselves just or groundless, it being a certain *maxime*, both in Law and Divinity, that *Conscientia etiam erronea ligat*: And therefore tho the Pannel had thought fit, for the clearing and exoneration of his own conscience, in a matter of the highest concern as to his peace and repose, to have exprest and declared the exprels sense in which he could take the Oath, whether the said sense was consistent with the Act of Parliament or not, yet it does not in the least import any matter of reproach or reflection upon the justice or prudence of the Parliament in imposing the said Oath: but alenarly does evince the weakness and scrupulosity of a mans conscience, who neither did, nor ought to have taken the Oath but with an explanation that would have saved his conscience to his apprehension. Otherwise he had grossly sinned before God, even tho it was *Conscientia errans*. And this is allowed and prescribed by all Protestant Divines, as indispensibly necessary, and was never thought to import any crime, and is also commended even by Popish Casuists themselves, who tho they allow, in some cases, of mental reservations and equivocations, yet the exprels declaration of the sense of the party is allowed and commended, as much more ingenuous: and *tutius Remedium Conscientiae ne illaqueetur*, as appears by Bellarmine de *Juramento*, and upon the same Title de *Interpretatione Juramenti*; and Lessius, that famous Casuist, de *Justitia & Jure*, *Dubitatione* 8, 9. *utrum si quis salvo animo aliquid*

Juramento promittat obligetur. & quale peccatum hoc sit. And which is the general opinion of all Casuists, and all Divines, as may appear by *Amesius*, in his *Treatise de Conscientia*, *Sanderfon de Juramento, Praelectione secunda*. And such an expresse Declaration of the sense and meaning of any party, when required to take an Oath, for no other end but for the clearing and exoneration of his own Conscience, was never in the opinion of any Lawyer, or any Divine, construed to be the Crime of Leasing-making, or of defamatory Libels, or depraving of publik Laws, or reproaching or misconstruing of the Government: but on the contrary, by the universal suffrage of all Protestant Divines, there is expressly required, in Cases of a scrupulous Conscience, an abhorrence and detestation of all reserved senses, and of all *Amphibologies* and Equivocations, which are in themselves unlawful and reprobate, upon that unanswerable Reason, that *Juramentum* being the highest Act of Devotion and Religion *in eo requiritur maxima simplicitas*; and that a party is obliged, who has any scruples of Conscience, publikly and openly to clear and declare the same.

4. Albeit it is not controverted, but that a Legislator, imposing an Oath, or any publik Authority, before whom the Oath is taken, may, after hearing of the Sense and Explication which a person is willing to put upon it, either reject or accept of the same, if it be conceived not to be consistent with the genuine sense of the Oath: Yet tho it were rejected, it was never heard of, or pretended, that the offering of a sense does import a crime, but that notwithstanding thereof, *Habetur pro Recusante*, and as if he had not taken the Oath, and to be liable to the certification of Law, as if he had been a Refuser.

5. The Pannel having publikly, and openly declared the sense in which he was free to take the Oath, it is offered to be proved that he was allowed, and did accordingly proceed to the taking of the Oath, and did thereafter take his place, and sit and vote, during that *Sederunt* of Privy-Council. So as the pretended sense and Explication, which he did then emit and give, can import no Crime against him.

6. It is also offered to be proved, that before the Pannel was required to take the Oath, or did appear before his Royal Highness, and Lords of Privy-Council, to take the same, there were a great many Papers spread abroad from persons, and Ministers of the Orthodox Clergy; and as the Pannel is informed some thereof presented to the Bishops of the Church, in the name of Synods and Presbyteries which did, in downright terms, charge the *Test* and Oath with alledged contradictions and inconsistencies. And for satisfaction whereof some of the Learned and Reverend Bishops of the Church did write a learned and satisfying Answer, called *A Vindication of the Test, for clearing the Scruples, Difficulties and mistakes that were objected against it*. And which Vindication and Answer was exhibited, and read before the Lords of His Majesties Privy-Council, and allowed to be printed: And from which the Pannel argues.

1. That it neither is, nor can be pretended in this Libel, that the alledged Explication, wherein he did take the Oath, does propose the scruples of his Conscience in these terms, which were proposed by the Authors of these Objections which do flatly and positively assert, that the Oath and *Test* do contain matters of inconsistency and contradiction, whereas all that is pretended in this Libel, with the most absolute violence can be put upon the words, is arguing Implications and Inferences, which neither the words are capable to bear, nor the sincerity of the Earls intention and design, nor the course of his by-past Life can possibly admit of. And yet none of the persons who were the Authors of such Papers were ever judged or reputed Criminal or Guilty, and to be prosecuted for the odious and infamous Crimes libelled, of *Treason, Leasing-making, Perjury*, and the like.

2. The Pannel does also argue from the said matter of Fact, that the alledged Explication libelled can neither in his intention and design, nor in the words, infer or import any Crime against him, because before his being required, or appearing to take the Oath, there were spread abroad such Scruples and Objections, by some of the Orthodox Clergy and others: So that the Earl can never in any sense be construed in his Explication wherein he took the Oath, to have done it *animo infamandi*, and to declaim against the Government: For the Scruples and Objections that were spread

spread abroad by others were a fair and rational occasion why the Earl in any sense or explication which he offered might have said that he was confident the Parliament never intended to impose contradictory Oaths; and this is so far from importing the insinuation and inference made by the Libel, that thereby the Parliament were so impious as to impose contradictory Oaths, as on the contrary, considering the Circumstances forementioned, that there were Papers spread abroad, insinuating: That there were inconsistencies and contradictions contained therein, the said expression was an high Vindication of the Honour and Justice of the Parliament, against the Calumnies and Misrepresentations which were cast upon it, and was also a just Rise for the Pannel, for the clearing and exoneration of his own Conscience, in the various senses and apprehensions which he found were going abroad as to the said *Test*, humbly to offer his sense, in which he was clear and satisfied to take the Oath.

7. To the Libel in so far as it is founded upon the Act of Parliament, viz. *Act 130 Par. 8* James 6 declaring That none should presume to impugn the Dignity or Authority of the Three Estates of Parliament or procure any invasion or diminution thereof, under the pain of Treason; as also in so far as it is pretended in the Libel That the Pannel by offering the Sense and Explication libelled, has assumed the Legislative Power, which is incommunicable, and has made a Law, or a part of a Law.

It is answered. The Libel is most groundless and irrelevant, and against which the Act of Parliament is opposed, which is so plain and evident upon the reading thereof, that it neither is nor can be subject to the least cavillation: And the plain meaning whereof is nothing else but to impugn the Authority of Parliaments, as if the King and Parliament had not a Legislative Power or were not the highest Representative of the Kingdom; or that any of the Three Estates were not essentially requisite to constitute the Parliament. And besides there is nothing more certain, than that the occasion of the said Act its being made was in relation to the Bishops and Clergy: And there is nothing in the pretended Explanation that can be wrested to import the least Contravention of the said Act, or to be an impugning of the Three Estates of Parliament, or a seeking any innovation therein. And it is admired, with what shadow of Reason it can be pretended, That the Pannel has assumed a Legislative Power, or made a part of a Law, seeing all that is contained in the alledged Explication libelled is only a Declaration of the Earl's sense in which he was satisfied to take the Oath, and so respected none but himself, and for the clearing of his own Conscience, which justly indeed the Word of God calls a Law to himself, without any encroaching upon the Legislative Power. And where was it ever debated, but that a man in the taking of an Oath, if as to his apprehensions he thought any thing in it deserved to be cleared, might declare the same, or that his exhibiting, at the time of the taking of the Oath, his sense and explication wherein he did take it, was ever reputed or pretended to be the assuming of a Legislative Power, it being the universal practice of all Nations to allow this liberty; and which sense may be either rejected or accepted, as the Legislator shall think fit, importing no more but a Parties private sense for the exoneration of his own Conscience? And as to that Member of the Libel founded upon *Act 19 Par. 3* Queen Mary, it contains nothing but a Declaration of the pain of Perjury, and there is nothing in the Explication libelled, which can in the least be inferred as a Contravention of the said Act, in respect if it should be proved That the Pannel, at the time of the taking of the Oath did take it in the words of the said Explication, as his sense of the Oath, it is clear that the sense being declared at the time of taking the Oath, and allowed as the sense wherein it was taken the Pannel can only be understood to have taken it in that sense. And although publick Authority may consider whether the sense given by the Pannel does satisfy the Law or not yet that can import no more though it was found not to satisfy, but to hold the Pannel as a Refuser of the Oath: but it is absolutely impossible to infer the Crimes of Perjury upon it, being as is pretended by the Libel the Pannel did only take it with the Declaration of the Sense and Explication libelled.

8. As the Explication libelled does not at all import all, or any of the Crimes contained in the said Libel, so by the common Principles of all Law, where a person does emit words for the clearing and exoneration of his own Conscience, altho there were any ambiguity, or unclearness, or involvedness in the tenor or import of the expressions

ons or words, yet they are ever to be interpreted, *Interpretatione benigna & favorabili* according to the general Principles of Law and Reason. And it never was, nor can be refused to any person to interpret and put a congruous sense upon his own words. especially the Pannel being a person of eminent Quality, and who hath given great demonstration, and undeniable evidences of his fixt and unalterable Loyalty to His Majesties Interest and Service, and, at the time of emitting the said Explication, was invested and entrusted in publik Capacities. And it is a just and rational interpretation and caution which *Sanderson*, that judicious and eminent Casuist, gives, *Praelect. 2. That dicta & facta principum, parentum, rectorum*, are ever to be looked upon as *benigna Interpretationis*, and that *Dubia sunt interpretanda in meliorem partem*. And there is nothing in the Explication libelled which, without detortion and violence, and in the true sense and design of the Pannel, is not capable of this benign Interpretation and construction. especially respect being had to the Circumstances wherein it was emitted and given, after a great many Objections, Scruples, and alledged Inconsistencies, were owned, vented and spread abroad, which was a rise to the Earl for using the expressions contained in the pretended Declaration libelled.

10. These words whereby it is pretended the Pannel declares, *he was ready to give obedience as far as he could*, first, do not in the least import That the Parliament had imposed any Oath which was in it self unlawful: but only the Pannel's scrupulosity and unclearness in matter of Conscience. And it is hoped it cannot be a Crime, because all men cannot go the same length. And if any such thing were argued, it might be argued ten times more strongly from a simple refusing of the Oath, as if any thing were enjoined which were so hard that it is not possible to comply with it: And yet such Implications are most irrational and inconsequential, and neither in the case of a simple and absolute refusing of the Oath, nor in the case of an Explication of the parties sense wherein he is willing to take the Oath, is there any impeachment of the Justice and prudence of the Legisslator, who imposeth this Oath, but singly a declaration of the scrupulosity and weakness of the party, why he cannot take the Oath in other terms: and such Explications have been allowed by the Laws and Customs of all Nations, and are advised by all Divines, of whatsoever Principles, for the solace and security of a Man's Conscience.

2. As to that point of the Explication libelled, *That I am confident the Parliament never intended to impose contradictory Oaths*; it respects the former answer, which, considering the plain and down right Objections which were spread abroad, and made against the Oath, as containing inconsistencies and contradictions, was an high Vindication of the Justice and Prudence of the Parliament.

3. As to these words, *And therefore I think no body can explain it but for himself*. The plain and clear meaning is nothing else but that the Oath being imposed by Act of Parliament it was of no private interpretation; And that therefore every man who was to take it behooved to take it in that sense which he apprehended to be the genuine sense of the Parliament. And it is impossible, without impugning common sense, that any man could take it in any other sense, it being as impossible to see with another mans eyes as to see with his private Reason. And a mans own private sense and apprehension of the genuine sense was the only proper way wherein any man could rationally take the Oath.

And as to these words, *That he takes it as far as it is consistent with it self and the Protestant Religion*. The Pannel neither intended nor exprest more, but that he did take it as a true Protestant, and he hopes all men have taken it as such.

And as to that Clause, Wherein the Pannel is made to declare, *That he does not bind up himself in his Station, in a lawful way, to wish and endeavour any alteration he thinks to the advantage of Church or State, nor repugnant to the Protestant Religion and his Loyalty*.

It is answered. There is nothing in this expression that can import the least Crime, or give the least umbrage for any Mistake, For,

It is most certain, it is impossible to elicit any such thing from the Oath, but that it was the intention of the Parliament, That persons, notwithstanding of the Oath, might concur in their stations, and in a lawful way, in any Law to the advantage of Church

Church and State. And no rational man ever did, or can take the Oath in other terms, that being contrary to his Allegiance and Duty to His Sacred Majesty and Prince.

2. There is nothing in the said Expression which does in the least point at any alteration in the Fundamentals of Government, either in Church or State; but on the contrary, by the plain and clear words and meaning, rather for its perpetuity, stability and security. The Expression being cautioned to the utmost scrupulosity, as that it was to be done in a lawful manner; that it was to be to the advantage of Church or State; that it was to be consistent with the Protestant Religion, and with his Loyalty, which was no other but the duty and Loyalty of all faithful Subjects; and which he has signally and eminently expressed upon all occasions. So that how such an expression can be drawn to import all or any of the Crimes libelled passeth all Natural Understanding.

And as to the last words, *And this I understand as a part of my Oath*, which is libelled to be a treasonable Invasion, and assuming of the Legislative Power. It is answered, It is most unwarrantable; and a Parties declaring the sense and meaning in which he was free to take an Oath does not at all respect or invade the Legislative Power, of which the Pannel never entertained a thought, but has an absolute abhorrence and detestation of such practices. But the plain and clear meaning is, That the Sense and Explication was a part of his Oath, and not of the Law imposing the Oath, these being as distant as the Two Poles: and which Sense was taken off the Earl's Hands and he accordingly was allowed to take his Place at the Council-Board, and therefore repeats the former general Defences.

And to convince the Lords of Justiciary, that there is nothing in the pretended Explication libelled which can be drawn to import any Crime, even of the lowest size and degree, and that there is no expression therein contained that can be detorted or wrested to import the same, is evident from that learned Vindication published and spread abroad by an eminent Bishop, and which was read in the face of the Privy-Council and does contain expressions of the same nature, and to the same import contained in the pretended Explication libelled as the ground of this Indictment libelled against the Pannel. And it is positively offered to be proven, That these terms were given in, and read, and allowed to be Printed, and (without taking notice of the whole tenor of the said Vindication, which the Lords of Justiciary are humbly desired to peruse, and consider, and compare the same with the Explication libelled) the same acknowledgeth, that Scruples had been raised and spread abroad against the Oath; and also acknowledgeth, that there were Expressions therein that were dark and obscure; and likewise takes notice, that the Confession ratified Par. 1 *James 6.* to which the Oath relates, was hastily made, and takes notice of that Authority that made it, and acknowledges in plain terms, that the Oath does not hinder any regular endeavour to regulate or better the Established Government; but only prohibits irregular endeavours and attempts to invert the substance or body of the Government; and does likewise explain the Act of Parliament anent His Majesties Supremacy, that it does not reach the alteration of the external Government of the Church. And the Pannel and his Proctors are far from insinuating in the least, that there is any thing in the said Vindication but what is consistent with the exemplary Loyalty, Piety and Learning of the Writer of the same. And tho others perhaps may differ in their private opinion, as to this interpretation of the Act of Parliament anent the Kings Supremacy, yet it were most absurd and irrational to pretend that whether the mistake were upon the interpretation of the Writer, or the sense of others, as to that point, that such mistakes or misapprehensions, upon either hand, should import or infer against them the Crimes of Leasing-making, or depraving His Majesties Laws: For if such Foundations were laid, Judges and Lawyers had a dangerous employment, there being nothing more ordinary than to fall into differences and mistakes of the sense and meaning of the Laws and Acts of Parliament. But such Crimes cannot be inferred, but with and under the qualifications above-mentioned, of malicious and perverse designs, joyned with licentious, wicked and reproachful speeches spread abroad, to move sedition and dislike of the Government. And the said Laws were never otherwise interpreted, nor extended in any case. And therefore the Explication libelled, neither as taken com-
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plexly, nor in the several expressions thereof, nor in the design of the ingiver of the same, can in Law import against him all or any of the Crimes libelled.

In like manner the Pannel conjoins with the grounds above-mentioned the Proclamation issued forth by His Majesties privy-Council, which acknowledges and proceeds upon a Narrative, that scruples and jealousies were raised and spread abroad against the Act of Parliament enjoining the *Test*. For clearing and satisfaction whereof the said Proclamation was issued forth, and is since approved by His Sacred Majesty.

The Kings Advocate's Argument and Plea against the Earl of Argyle.

HIS Majesties Advocate, for the foundation of his Debate, does represent, That His Majesty, to secure the Government from the Rebellious Principles of the last Age, and the unjust Pretexts made use of in this, from Popery, and other Jealousies; as also to secure the Protestant Religion, and the Crown, called a Parliament; and that the great security resolved on by the Parliament was this excellent *Test*, in which, that the old juggling Principles of the Covenant might not be renewed, wherein they still swore to serve the King in their own way, the Parliament did positively ordain, That this Oath should be taken in the plain genuine meaning of the words, without any evasion whatsoever. Notwithstanding whereof, the Earl of *Argyle*, by this Paper, does invent a new way, whereby no man is at all bound to it. For how can any person be bound, if every man will only obey it as far as he can, and as far as he conceives it consistent with the Protestant Religion, and with it self, and reserve to himself, notwithstanding thereof, to make any alteration that he thinks consistent with his Loyalty? And therefore His Majesties Advocate desires to know to what the Earl of *Argyle*, or any man else, can be bound by this *Test*? what the Magistrate can expect, or what way he can punish his Perjury? For if he be bound no farther than he himself can obey, or so far as this Oath is consistent with the Protestant Religion or it self, *quomodo constet*, to whom or what he is bound? And who can determine that? Or against what alteration is the Government secured, since he is Judge of his own alteration? So that that Oath, that was to be taken without any evasion, is evaded in every single word or Letter; and the Government as insecure as before the Act was made, because the taker is no farther bound than he pleases. From which it cannot be denied, but his Interpretation destroys not only this Act, but all Government, since it takes away the security of all Government, and makes every mans Conscience, under which Name there goes ordinarily in this Age Humour and Interest, to be the rule of the takers obedience. Nor can it be conceived to what purpose Laws, but especially Oaths, needed to be made, if this were allowed; or how this cannot fall under the 107th Act, Par. 7. James 6. whereby it is statuted, *That no man interpret the Statutes otherwise than the maker understood*. For what can be more contrary to the taking of them in the makers sense, than that every man should obey as far as he can, and be allowed to take them in a general sense, so far as they are consistent with themselves, and the Protestant Religion, without condescending wherein they do not agree with the Protestant Religion? and that they are not bound not to make any alteration which they think good for the States? For all these make the rule of obedience in the taker, whereas the positive Law makes it to be in the maker. Or how could they be punished for Perjury after this Oath? For when he were quarrelled for making alterations against this Oath; and so to be perjured, he might easily answer, That he took this Oath only in so far as it was consistent with the Protestant Religion, and with a *Salvo*, that he might make any alteration that he thought consistent with his Loyalty. And as to these Points, upon which he were to be quarrelled, he might say, he did not think them to be inconsistent with his Loyalty, think we what we pleased, and so needed not be perjured, except he pleased to decide against himself: For in these Generals he reserves to himself to be still Judge. And this were indeed a fine security for any Government. And by the same rule that it looses
this

this Oath, it shews a way of loosing all Oaths and Obedience: And consequently strikes at the root of all Laws, as well as this: Whereas to shun all this, not only this excellent Statute 107. has secured all the rest, but this is common Reason: And in the opinion of all Divines, as well as Lawyers in all Nations, *Verba juramenti intelliguntur secundum mentem & intentionem ejus, cui fit juramentum*. Which is set down, as the grand position, by *Sanderfone* (whom they cite,) Pag. 137. and is founded upon that Mother-Law, Leg. 10. *cui interrogatus f.f. de interrogationibus in Jure faciendus*; and without which no man can have sense of Government in his head, or practise it in any Nation. Whereas on the other hand there is no danger to any tender Conscience, since there was no force upon the Earl to take the Oath, but he took it for his own advantage, and might have abstained.

2. It is inferred from the above-written matter of Fact, That the Earl is clearly guilty of contravention of the 10. *Act*, Parl. 10. *James VI.* Whereby the Liedges are commanded not to write any purpose of Reproach of His Majesties Government, or misconstrue his Proceedings, whereby any misliking may be raised betwixt his Highness, his Nobility, or his People. And who can read this Paper, without seeing the King and Parliament reproached openly in it? For who can hear, that the Oath is only taken as far as it is consistent with it self and the Protestant Religion, but must necessarily conclude, that in several things it is inconsistent with it self, and the Protestant Religion? For if it were not inconsistent with it self, and the Protestant Religion, why this Clause at all but it might have been simply taken? For the only reason of hindering it to be taken simply, was because of the inconsistency: *ergo* there behoved necessarily to be an inconsistency. And if there be any inconsistency with the Protestant Religion, or any contradiction in the Oath it self, can there be any thing a greater Reproach on the Parliament, or a greater ground of dislike to the People? And whereas it is pretended, That all Laws and Subsumptions should be clear, and these are only Inferences. It is answered, That there are some things which the Law can only forbid in general: And there are many Inferences which are as strong and natural, and reproach as soon, or sooner, than the plainest defamations in the world do: For what is openly said of reproach to the King does not wound him so much as many seditious insinuations have done in this Age and the last: So that whatever was the Earl's design (albeit it is always conceived to be unkind to the *Act*, against which himself debated in Parliament,) yet certainly the Law in such cases is only to consider what effect this may have amongst the People: And therefore the Acts of Parliament, that were to guard against the misconstruing of His Majesties Government, do not only speak of what was designed, but where a disliking may be caused, and so judgeth *ab effectu*: And, consequentially to the same emergent Reason, it makes all things tending to the raising of dislike to be punishable by the *Act* 60. Parl. 6. *Queen Mary*; and the 9. *Act*. Parl. 20. *James VI.* So that the Law designed to deter all men by these indefinite and comprehensive Expressions: And both in this and all the Laws of Leasing-making, the Judges are to consider what falls under these general and comprehensive words, Nor could the Law be more special here, since the makers of Reproach and Slander are so various that they could not be bound up or exprest in any Law: But as it evidently appears, that no man can hear the words exprest, if he believe this Paper, but he must think the Parliament has made a very ridiculous Oath, inconsistent with it self and the Protestant Religion, the words allowing no other sense, and having that natural tendency; Even as if a man would say, I love such a man only in so far as he is an honest man, he behoved certainly to conclude, that the man was not every way honest; So if your Lordships will take measures by other Parliaments, or your Predecessors, ye will clearly see, That they thought less than this a defaming of the Government, and misconstruing His Majesties Proceedings. For in *Balmerino's* Case the Justices find an humble Supplication made to the King himself to fall under these Acts now cited. Albeit as that was a Supplication so it contained the greatest expressions of Loyalty, and offers of Life and Fortune that could be exprest, Yet because it insinuates darkly, That the King in the preceeding Parliament had not favoured the Protestant Religion, and they were sorry he should have taken Notes with his own hands of what they said, which seems to be most innocent, yet he was found guilty upon those same very Acts. And the Parliament 1661. found his Lordship

himself guilty of Leasing - making, tho he had only written a Letter to a private Friend, which requires no great care nor observation, (but this Paper which was to be a part of his own Oath does) because after he had spoken of the Parliament in the first part of this Letter, he thereafter added, *That the King would know their Tricks:* Which words might be much more applicable to the private Persons therein designed, than that the words now insisted on can be capable of any such Interpretation. And if either Interpretations, upon pretext of exonerating of Conscience, or otherwise, be allowed, a man may easily defame as much as he pleases: And have we not seen the King most defamed by Covenants entered into upon pretence to make him great and glorious, By Remonstrances made to take away his Brother and best Friend, upon pretence of preserving the Protestant Religion, and His Sacred Person? And did not all who rebelled against him in the last Age declare, That they thought themselves bound in duty to obey him, but still as far as that could consist with their respect to the Protestant Religion, and the Laws and Liberties, which made all the rest ineffectual? And whereas it is pretended, That by these words, *I take the same in as far as it is consistent with it self and the Protestant Religion*, nothing more is meant, but that he takes it as a true Protestant: His Majesties Advocate appeals to your Lordships, and all the Hearers, if upon hearing this Expression they should take it in this sense, and not rather think that there is an inconsistency. For if that were possible to be the sense, what need he say at all, *as far as it is consistent with it self?* Nor had the other part, *as far as it is consistent with the Protestant Religion*, been necessary. For it is either consistent with the Protestant Religion, or otherwise they were Enemies to the Protestant Religion, that made it. Nor are any Lawyers or others in danger, by pleading or writing: For these are very different from; and may be very easily pleaded without defaming a Law, and an Oath, when they go to take it. But if any Lawyer should say, in pleading or writing, That the *Test* was inconsistent, or, which is all one, that it were not to be taken by any man, but so far as it was consistent with it self, and the Protestant Religion, no doubt this would be a crime even in pleading, tho pleading has a greater allowance than deliberate swearing has: And as there is nothing wherein there is not some inconveniency, so the inconveniency of defaming the Government is much greater than that of any private mans hazard, who needs not err except he please.

Whereas it is pretended, That before the Earl gave in this Explication, there were other Explications spread abroad, and Answers read to them in Council, and that the Council it self gave an Explication. It is answered, That if this Paper be Leasing-making, or misconstruing His Majesties Proceedings, and Treasonable, as is contended, then a thousand of the like offences cannot excuse it. And when the King accused Noblemen, Ministers, and others, in the Year 1661. for going on in the Rebellions of that Age, first with the Covenanters, and then with the usurpers, it was found no Defence, That the Nation was over-grown with those Crimes, and that they were thought to be duties in those days, Yea, this were to invite men to offend in multitudes. And albeit sometimes these who follow the examples of multitudes may thereby pretend this as an excuse to many, yet this was never a formal Defence against Guilt, nor was ever the chief of the Offenders favourable on that Head. And it is to be presumed, That the Earl of Argyle would rather be followed by others, than that he would follow any example. But His Majesties Advocate does absolutely decline to debate a point that may defame a constant and standing Act of Parliament, by leaving upon record a memory of its being opposed. Nor were this Relevant, except it could be said, the Council had allowed such Explications which reflected upon the King and the Government: For the writing an Answer is no allowance, but a condemning: Nor can the Council allow any more than they can remit: And tho it may justly be denied that the Council heard even the Earl's own Explanation, yet the hearing or allowing him to sit is no Relevant Plea, because they might very justly have taken a time to consider how far it was fit to accuse upon that Head. And it is both just and fit for the Council to take time; and by express Act of Parliament the negligence of the Kings Officers does not bind them. For if this were allowed, Leading men in the Council might commit what Crimes they pleased in the Council, which certainly the King may quarrel many years after. And tho all the Council had allowed him that day, any one Officer of State might have quarrelle

quarrelled it the next day. As to the Opinion of *Bellarmino*, *Sanderfon*, and others, it is ever contended, that the Principles of the Covenant agree very well with those of the Jesuits, and both do still allow Equivocations and Evasions: But no solid, Orthodox Divine ever allowed, That a man who was to swear without any Evasion should swear so as he is bound to nothing, as it is contended the Earl is not, for the Reasons represented. And as they still recommend, That when men are not cleare they might abstain, as the Earl might have done in this Case, so they still conclude. That men should tell in clear terms what the sense is by which they are to be bound to the State: Whereas the Earl here tells only in the general, and in most ambiguous terms, That he takes it as far as he can obey, and as far as it is consistent with the Protestant Religion, and that he takes it in his own sense, and that he is not bound by it from making alterations, but as far as he thinks it for the advantage of Church or State: Which sense is a thousand times more doubtful than the *Test*, and is in effect nothing but what the taker pleases himself.

As to the Treason founded on, His Majesties Advocate founds it first upon the Fundamental and Common Laws of this and all Nations, whereby it is Treason for any man to make any alteration he shall think for the advantage of Church or State: Which he hopes is a Principle cannot be denied in the general. And whereas it is pretended, That this cannot be understood of mean alterations, and of alterations to be made in a lawful way: It is answered, That as the thing it self is Treason, so this Treason is not taken off by any of these qualifications; because he declares, he will with and endeavour any alteration he thinks fit: And any alteration comprehends all alterations that he thinks fit: *Nam propositio indefinita æquipollet universali*. And the word *any* is general in its own nature, and is in plain terms a reserving to himself to make alterations, both great and small. And the restriction is not, all alterations that the King shall think fit, or are consistent with the Laws and Acts of Parliament; but he is still to be Judge of this, and his Loyalty is to be the Standard. Nor did the Covenanters in the last Age, nor do these who are daily executed, decline that they are bound to obey the King, simply, but only that they are bound to obey him no otherwise than as far as his Commands are consistent with the Law of God, of Nature, and of this Kingdom, and with the Covenant: And their Treason lies in this. And when it is asked them, Who shall be judge in this, they still make themselves Judges. And the reason of all Treason being, that the Government is not secure, it is desired to be known, what way the Government can be secured after this Paper, since the Earl is still Judge how far he is obliged, and what is his Loyalty. And if this had been sufficient, the Covenant had been a very excellent Paper: for they are there bound to endeavour, in their several stations, to defend the Kings Person: but when the King challenged them, how they came to make War against him? their great Refuge was, That they were themselves still Judges as to that. And for illustrating this Power, the Lords of Justiciary are desired to consider, *quid juris*, if the Earl, or any man else should have reserved to himself in this Oath a liberty to rise in Arms, or to oppose the lineal Succession, tho he had added, *in a lawful manner*: For the thing being in it self unlawful, this is but *thamm*, and *Protestatio contraria facto*. And if these be unlawful, notwithstanding of such additions, so much more must this general reservation, of making any alterations, likewise be unlawful, notwithstanding of these additions: For he that reserves the general power of making any alteration, does, *a fortiori*, reserve power to make any alteration, tho never so fundamental. For all particulars are included in the General; and whatever may be said against the Particulars may much more strongly be said against the General.

2. The 130. *Art. Par. 8.* *James VI.* is expressly founded on, because nothing can be a greater diminution of the power of the Parliament, than to introduce a way or mean whereby all their Acts and Oaths shall be made insignificant and ineffectual, as this Paper does make them, for the Reasons represented. Nor are any of the Estates of Parliament secure at this rate, but that they who reserved a general power to make all alterations, may, under that General, come to alter any of them.

3. What can be a greater impugning of the Dignity and Authority of Parliaments, than to say, That the Parliament has made Acts for the security of the Kingdom, which are in themselves ridiculous, inconsistent with themselves and the Protestant Religion?

And as to what is answered against invading the Kings Prerogative, and the Legislative Power in Parliaments, in adding a part to an Oath or Act, is not relevantly inferred, since the sense of these words, *And thus I understand as a part of my Oath*, is not to be understood as if any thing were to be added to the Law, but only to the Oath, and to be an interpretation of the Oath. It is replied, That after this, no man needs to add a Caution to the Oath in Parliament. But when he comes to take the Oath, do the Parliament what they please, he will add his own part. Nor can this part be looked upon as a sense: For if this were the sense before this Paper, he needed not understand it as a part of it, for it wanted not that part. And in general, as every man may add his own part, so the King can be secure of no part. But your Lordships of Justiciary are desired to consider, how dangerous it would be in this Kingdom, and how ill it would sound in any other Kingdom, That men should be allowed to reserve to themselves liberty to make any alteration they thought fit in Church or State, as to the legality of which, they were themselves to be Judges: And how far, from Degree to Degree, this at last may come to absolute Anarchy, and how scandalous a thing, as well as unsecure, this new way may look in an Age wherein we are too much tracing the steps of our rebellious Progenitors in the last, whose great detection and error was, That they thought themselves, and not the King the Authors of Reformation in Church and State. And no man ever was barred by that, that the way he was upon was not a lawful way: For if it be allowed to every man to take his own way, every man will think his own way to be the lawful way.

As to the Perjury, it is founded on this, first. That perjury may be committed, not only by breaking an Oath, but even in the swearing of it, *viz.* to swear it with such Evasions as make the Oath ineffectual: For which *Sanderone* is cited, *Pag. 138.* *Alicum Perjurii genus est novo aliquo excogitato Commento Juramenti vim declinare, aut eludere, & Jurans tenetur sub pena Perjurii implere Secundum Intentionem deferentis;* both which are here. For the Earl being bound by the very Oath, to swear in the genuine meaning, without any evasion, he has sworn so as he has evaded every word, there being not one word to which it can be said particularly he is bound, as is said. And it is undeniable, that he has not sworn in the sense of the makers of the Law, but in his own sense, which is Perjury, as is said. And consequentially, whatever sense may be allowed in ambiguous Cases, yet there can be none where the Paper clearly bears Generals: And where he declares, That he takes it in his own sense, His Majesties Advocate declares, he will not burden himself, that Copies were dispersed, tho it is certain, since the very Paper it self by the giving in is chargeable with all that is above charged upon it.

Sir John Dalrymple's Defence and Plea for the Earl of Argyle, by way of Reply upon the King's Advocate.

SIR *John Dalrymple* replies for the Pannel, That since the solid grounds of Law adduced in the Defences have received no particular Answers, in relation to the common consent of all Casuists, *viz.* That a party who takes an Oath is bound in Conscience to clear and propose the terms and sense in which he does understand the Oath; Nor in relation to the several Grounds adduced concerning the legal and rational Interpretation of dubious Clauses. And since these have received no Answers, the Grounds are not to be repeated: but the Proctors for the Pannel do farther insist on these Defences.

1. It is not alledged, That any Explanation was given in by the Pannel to any person, or any Copy spread, before the Pannel did take the Test in Council: So that it cannot be pretended, That the many Scruples that have been moved concerning the Test, did arise from the Pannel's Explication: But on the contrary, all the Objections that are answered, and obviated in the Pannel's Explication, were not only privately muttered, or were the thoughts of single or illiterate persons

persons, but they were the difficulties proposed by Synods and Presbyteries, long before the Pannel came from home, or was required to take the *Test*: So that the general terms of the Acts of Parliament founded upon in the Label are not applicable to this Case: For as these Laws, in relation to Leasing-makers, are only relative to atrocious wilful Insinuations, or misconstructions of His Majesties Person or Government, or the open depraving of his Laws, so the restrictive Clause, *whereby sedition or misconstructions may be moved, raised, or engendered betwixt His Majesty and his Liedges*, cannot be applied to this Case, where all these Apprehensions and Scruples were on foot, and agitated long before the Pannel's Explanation.

As it cannot be pretended, That any new dust was raised by the Pannel's Explanation, so it is positively offered to be proved, That there is not one word contained in this Explanation, but that either these individual words, or much worse, had been publicly proposed, and *verbatim* read in Council, without the least discouragement, or the least objection made by any Member of the Council. And where a Writing, *ex proposito* read in so high a Court, was universally agreed upon, without the alteration of a syllable, how can it be pretended, That any person thereafter using the said individual terms in any Explanation, and far easier terms, that they shall incur the high and infamous Crimes libelled? And the question is not here, Whether the Council was a proper Judicature to have proposed, or imposed a sense, or allowed any Explanation of the *Test* to be published; but that it is impossible that a sense they allowed, or being publicly read before them, and which the Kings Advocate did not controul, that this should import Treason, or any Crime: And tho the Pannels Advocate will not pursue or follow the Reply that has been made to this point yet certainly no man of sober sense will think that it is fit to insinuate that so high a Judicature might have authorized or acquiesced in such Explanations as the Liedges thereafter should be entrapped to have used.

If the Pannel had officiously or ultroneously offered a sense or Explanation of His Majesties Laws, which the Laws themselves could not have born, it might justly have been alledged, that he was *extra ordinem*, and meddling in a matter he was not concerned in but where the Act of Council did enjoin, and he was required and cited to that effect, It could neither be constructed as ostentation, or to move or encourage scruples or Resistance, but it was absolutely necessary, either for to have refuted the *Test*, or else to have declared what he thought to be the true and genuine meaning of it. And there being so many objections publicly moved and known, his Explanation was nothing else but to clear, That he did not look upon these Scruples and Objections moved by others as well founded and rational in themselves; and therefore he was able to take the *Test* in that sense the Council had heard or allowed. And it is not controverted, that the sense of the Legislator is the genuine sense both of Laws and Oaths: And if a person were only interpreting the meaning of either a Law or an Oath imposed, he should deprave and misconstruct the Law and Oath, if he rendered it wittingly and willingly in terms inconsistent with the meaning of the imposer: But there is a great difference betwixt taking of Oaths, and interpreting Oaths; For when a man comes to take an Oath, except his particular sense did agree with the genuine meaning of the imposer, he cannot take that Oath, tho he may very well interpret and declare what is the sense of the Legislator, which he may know, and yet perhaps not be able to take the Oath.

And therefore when there is any doubtfulness in an Oath, and a party is bound to take it, if then he gives in an Explication of the sense which he in his private judgment doth apprehend to be the genuine meaning, if that private sense be disconform to the Legislators sense in the Oath, then the imposer of the Oath, or he that has power to offer it to the party, if he consider the parties sense disconform, he ought to reject the Oath, as not fulfilling the intent of the Law imposing it.

But it is impossible to state that as a Crime: That a party should neither believe what is proposed in the Oath, nor be able to take it; And he can run no farther hazard, but the penalty imposed upon the Refuser. And therefore in all Oaths there must be a concurrence both of the sense imposed by Authority, and of the private Sense, Judgment or Conscience of the party. And therefore if a party should take an Oath in the Sense proposed by Authority contrary to his own sense, he were perjured: whereby it is evident that the sense of Authority is not sufficient, without the acquiescence and consent of

the private person. And therefore it is very strange, why that part of the Pannel's Explanation should be challenged, that he takes it in his own Sense, the *posterior* words making it as plain as the light, that that sense of his own is not what he pleases to make of the Oath, for it bears expressly, that no body can explain it but for himself, and reconcile it as it is genuine, and agrees in its own sense: So that there must be a Reconciliation betwixt his own sense and the genuine sense, which upon all hands is acknowledged to be the Sense of Authority. And if the Pannel had been of these lax and debauched Principles, that he might have evaded the meaning and energy of the Oath, by imposing upon it what sense he pleased, certainly he would have contented himself in the general refuge of Equivocation, or Mental Reservation, and he would never have exposed his sense to the world, in which he took this Oath, whereby he became absolutely fixed and determined to the Oath, in that particular sense, and so had no latitude of shuffling off the Energy or Obligation of the Oath. And it is likewise acknowledged, That the Cases alledged in the Reply are true, *viz.* That the person is guilty of Perjury, *si aliquo novo Commento* he would elude his Oath, or who doth not fulfil the Oath in the sense of the Imposer. But that does not concern this Case: For in the fore-said Citation, a person, after he has taken an Oath, finding out some new conceit to elude it he is perjured: but in this Case the Pannel did at, and before his taking the *Test*, declare the terms in which he understood it; So that this was not *novo aliquo commento* to elude it. And the other Case, where a party takes it in the sense of Authority, but has some subterfuge, or concealed Explanation, it is acknowledged to be Perjury. But in this Case there was no concealed Explanation, but it was publicly expressed, and an Explanation given, which the Pannel designed, and understood as the meaning of Authority, and had ground to believe he was not mistaken, since upon that Explanation he was received and allowed to sit and vote in Council.

And as to that part of the Reply, that explains the Treason, there can be no Treason in the Pannel's Case, because the express Act of Parliament founded upon doth relate only to the Constitution of the Parliament: And I am sure His Majesties Advocate cannot subsume in these terms: And therefore in the Reply he recurs to the general Grounds of the Law, That the usurping of His Majesties Authority, in making a part of the Law; and to make alterations in general, and without the King, are high and treasonable words or designs, and such as the party pleases, and such designs as have been practised in the late times. And that even the adjection of fair and safe words, as in the Covenant, does not secure from treasonable Designs; and that it was so found in *Balmerino's* Case, tho it bear a fair Narrative of an humble Supplication.

It is replied, That the usurpation of making of Laws is undoubtedly treasonable; but no such thing can be pretended or subsumed in this Case: For albeit the Pannel declares his Explanation to be a part of his Oath, yet he never meant to impose it as a part of the Law, or that this Explanation should be a thing distinct, or a separate part even of his Oath. For his Explanation being but *exegetik* of the several parts of the Oath, it is no distinct thing from the Oath, but declared to be a part of the Oath *de natura rei*. And it was never pretended, That he that alledged any thing to be *de natura rei*, did say, That that was distinct and separate, which were a Contradiction. And therefore the Argument is retorted, the Pannel having declared, this Explanation was, *de natura rei*, implied in the Oath, he necessarily made this Explanation no addition or extension of the Oath. So that for all this Explanation, the Oath is neither broader nor longer than it was.

And as to these words, *I do not mean to bind up my self in my station, and in a lawful way, to wish and endeavour any alteration I think to the advantage of Church or State, not repugnant to the Protestant Religion, and my Loyalty.* It is a strange thing how this Clause can be drawn in question, as treasonable, when it may with better Reason be alledged, That there is no good Subject but is bound to say it. And albeit the words *to endeavour in my station*, be words contained in the Covenant, yet that is no Reason, why two words in the Covenant may not be made use of in another very good and loyal sense. And there is no man that shall have the honour either to be entrusted by His Majesty in his Council, or any other Judicature, or to be a Member of Parliament, but he is bound by his Loyalty to say the same thing. And there was never a Clause more cautiously expressed, for the words run, *to endeavour any alteration I shall think*

think to the advantage of Church and State. And tho' that was sufficient, yet the Clause is so cautiously conceived, that it contains another Restriction, *not repugnant to Religion and his Loyalty.* So that except it could be alledged, That a man by lawful means, to the advantage of Church and State, consistent with his Religion and Loyalty, could make treasonable alterations, and invasions upon the Government and Monarchy, which are the highest Contradictions imaginable, there can be nothing against the Pannel. And albeit the Clause, *any alterations*, might, without the Restrictions and Qualifications foresaid, be generally extended, yet the preceeding words of *lawful way*, and the rational Interpretation of the emission of words especially before a solemn Judiciary, leaves no place or shadow to doubt, that these alterations were no fundamental or treasonable alterations, but such as the frailty of humane Affairs and Constitutions, and vicissitude of things and circumstances, do constantly require in the most exact Constitutions under Heaven. And the clause does not so much as import, that there is a present necessity of alteration, but it was a necessary and rational prospect, That albeit at present all things under Heaven had been done to secure the Religion and Government, yet there might occur Cases that would require new helps, alterations, and remedies. And it is not pretended in this Case for the Pannel, That he desires to alleviate, or take off words truly treasonable. or having an ill design, by the mixing of fair and safe, dutiful and submissive Expressions, which indeed are Protestations *contrarie facto.* For there is nothing in his Explanation, that either in his design, or in the words themselves, being rationally and naturally interpreted, can infer the Crimes libelled, or any of them. And the Pannel's known Principles, and known Practices do not only clear that Loyalty that he has profest before the Lords of Justiciary, and instructed by unquestionable Documents, but they put him far from the suspicion of these damnable Principles related in the Reply, Of which the whole tract of his Life hath been an intire evidence of his *abhorrency and detestation.* And in the last place, It is thought strange, why that should be represented as an affront or disgrace to the Government, That the Parliament imposed a *Test* which the Pannel is not able to take simply. And it is not pretended, That he hath defamed, written or spoken against the *Test* it self, or for the inconvenience of it; but only that he hath not been able to see the good ground upon which it may be simply taken. And this were to condemn him for want of sight or sense, when the Law hath punished no man for not taking the *Test*, but only turned him out of the Government. And it is as strange an Inference, That because the Pannel declares, He believes the Parliament meant no Contradiction and would take the *Test*, in as far as it is consistent, that therefore he said, the Parliament imposed Contradictions: Which is so far from a rational Induction, that the Contradiction of these Subsumptions, in all congruity of Language and Sense, is necessarily true. And therefore the last part of that Clause, *in so far as it is consistent*, is a Consequence inferred upon the former: *viz.* I believe the Parliament designed to impose no Contradictions: *ergo*, I take the *Test* as consistent, and in so far as it must be consistent, if the Parliament did not impose Contradictions, as certainly they have not; and to convince the world, that in this sense this Explanation is receivable, it was proposed in Council, and allowed, and therefore without the highest reflection, it cannot now be quarrelled.

**Sir George Lockhart's second Plea for the Earl of
Argyle, by way of Reply upon the King's Advocate.**

SIR George Lockhart Duplies, That the Defender repeats and opposes his former Defences, which are no ways elided, nor satisfied by the Reply made by His Majesties Advocate. And altho' it be easie for the Kings Advocate, out of his zeal, to pretend and argue Crimes of the highest Nature upon Inferences and Consequences, neither consistent with the Pannel's design nor with his words and expressions, yet there cannot be a more dangerous foundation laid, for the security and interest of the Government, and the security and protection of the Subjects, than that

Crimes

Crimes should be inferred but from clear, evident, and exprefs Laws, and plain palpable Contravention of these Laws, It being both against the Laws of God and Man, that a Man should be made an Offender for a word, and especially for expressions which according to Sense and Reason, and considering the time and place where they were spoken by the Pannel, *viz.* as a Member of His Majesties Privy-Council, and in presence of his Royal Highnes, and the Members of Council, and when required to take the *Test*, were safe and Innocent: and it were against all Law and Reason, to suppose that the Pannel either did, or designed to do any thing which may, or did import the Crimes libelled against him. And whereas it is pretended, That the Oath required and imposed by Act of Parliament was for the security of the Government; and that the Pannel by his Explication does evade the Oath, by taking it only so far as it is consistent with the Protestant Religion, and his own Loyalty, whereof he was Judge. It is answered, That the pretence is most unwarrantable, and the security of His Majesties Government is not at all endangered (as God forbid it should,) tho the Pannel, and a Thousand more had simply refused the *Test*, or had taken it in a sense which does not satisfy the Law; It being competent to publik Authority to consider, whether the Pannels Oath, in the terms of the Explication wherein he did take it, does satisfy the Act of Parliament or not; And if not, there can be no rational consequence inferred thereupon, but that he is holden as a Refuser of the Oath, and liable to the Certification of the Act of Parliament, of not assuming and continuing in any publik Trust: And no more was intended or designed by the Act of Parliament it self, than strictly to make the Oath in the true and genuine sense and meaning of the Parliament, an indispensable qualification of persons admitted to publik Trust. So that it is not at all material to dispute, whether the Pannel's Explication can be looked upon as a full satisfaction of the Act, which whether it should or not, it can import no Crime against him, it not being consistent with Sense and Reason, that a person who absolutely refuseth the *Test*, upon the scrupulosity of his Conscience, albeit he be not capable of publik Trust, should be, notwithstanding, looked upon as guilty of no Crime: and yet another who was willing to go a greater length, albeit he did demur and scruple as to the full length, that he should be reputed criminal and guilty of a Crime.

2. The Pannel repeats and conjoyns with this the grounds above-mentioned, contained in his Defences, *viz.* That neither the Crimes libelled, nor any other Crime, were ever pretended or made use of against any others, who did spread abroad Objections of an high nature, which yet were so favourably looked upon, as to be construed only to proceed from scrupulosity of Conscience, as also the satisfaction endeavoured is in such terms, and by such condescensions, as do take in, and justify the whole terms of the Explication libelled.

It is of great moment, and whereof the Lords of Justiciary are desired to take special notice, both for clearing the absolute innocence of the Pannel's meaning and intention, and to take off all possible misconstruction that can be wrested or detorted from the tenor and expressions of the libelled Explication, That the Pannel was put to, and required to take the Oath, before the Lords of His Majesties Privy-Council did pass and publish their Proclamation explaining the Oath, and declaring the genuine sense and meaning thereof, namely, That it did not tye to the whole Articles of the *Confession of Faith*, ratified by Act of Parliament, *James 6.* and which, as to several Articles thereof, had occasioned the scruples, and difficulties, and alledged inconsistency and contradiction betwixt the last part of the Oath and the said *Confession*, and betwixt some of these Articles, and the Currant of the Protestant Doctrine, received and contained in the *Synagma* of the Protestant *Confessions*. And therefore if the Pannel at that time did think fit, for the clearing and exoneration of his own Conscience, to use the expressions in the Explication libelled, and yet with so much duty and confidence of the Parliaments Justice, as to their meaning and intention, *That the Parliament never intended to impose contradictory Oaths;* and that he did take it so far as it was consistent with it self, and the Protestant Religion, not knowing then, whether the whole *Confession* was to be reputed a part of the Oath, and doubting there-anent; and which the Lords of His Majesties Privy-Council & his Sacred Majesty by his approbation since, have thought a difficulty of so great moment as it was fit to clear the same by a publik Proclamation; How now is it possible, that any Judicatory under Heaven, which proceeds upon the solid grounds of Law and Reason,

son, and who (it cannot be doubted) will have a just regard to the intrinsic Principles of Justice, and to all mens security; that they can now believe all, or any of the Crimes libelled, should be in the least interred from all, or any of the expressions contained in the said Explication? But that on the contrary it was a warrantable allowance, and Christian practice, condemned by the Law and Custom of no Nation, That having scruples in the matter of an Oath which should be taken in *Truth, Judgment & Righteousness*, and upon full deliberation, and with a full assurance and sincerity of mind, That he did plainly, openly, and clearly declare the sense in which he was willing to take it; and if Authority did allow it as the genuine sense of the Oath, the Pannel to be holden as a Taker of the Oath: And if upon farther consideration, Authority think not, that *habetur pro Recusante*, and a Refuser of the Oath, but no ways to be looked upon as a criminal or guilty person.

And the Pannel repeats and conjoins with this point of the Reply that point in his Defence, whereby he positively offers to prove, 1. That his Explication, and the sense wherein he took the Oath, was heard, and publikly given and received in Council, and the Pannel thereafter allowed to take his place, and sit and vote in that *Sederunt*.

2. The Pannel also offers positively to prove, That the tenor and terms of his Sense and Explication wherein he did take the Oath, is contained in that Solid, Learned, and Pious Vindication, written by the Bishop of *Edinburgh*, in answer to the Objections and alledged inconsistencies and contradictions in the Oath, and which Vindication was publikly read in Council, and so far approved, that it was allowed to be printed and published; and was accordingly dispersed and spread abroad. And it is not of the least import, that the Proclamation of the Lords of Privy-Council, altho it does only allow the same to be taken by the Clergy, yet at the same time they expressly declare the genuine sense and meaning of the Parliament not to comprehend the whole Articles of the *Confession*, which was not cleared before the Pannel's taking his Oath.

And whereas it is pretended, That the Acts of Parliament libelled upon, against Leasing-makers, depravers of His Majesties Laws, do obtain and take place, wherever there are any words or expressions that have a tendency in themselves, or by a natural consequence, and rational inferences, to reflect upon the Government, or misconstrue His Majesties Proceedings; and that the Explication libelled is such, and that it was found so in the Case of *Balmerino*, albeit it was drawn up by way of humble Petition and Address to His Majesty, and with great Protestations and Expressions of Loyalty. It is answered, The Acts of Parliament libelled upon are opposed, and the 43^d Act, Par. 8. James 6. and the other Acts, making the depraving of His Majesties Laws to be Crimes, do expressly require, that Speeches so judged be perverse and licentious Speeches, *ex natura sua probrosa* and reproachful, and spoke *animo defamandi*, and which could not receive any other rational Construction, which cannot in the least be applied to; or sublimed upon the words, or Explication given in by the Pannel. And Law and Reason never infers or presumes a Crime, where the thing is capable of a fair and rational Construction, and where it was done *palam* and publikly, and in presence of His Majesties High Commissioner, and Lords of His Majesties Privy-Council, whereof the Pannel had the honour to be a Member, Persons committing and designing to commit Crimes making use of Times, and Places, and Companies of another nature, on whom their suggestions and insinuations may prevail. But it is a violence to the common Reason of mankind, to pretend, that a person of the Pannel's Quality, having the honour to serve His Majesty in most eminent Capacities, and devoted to His Majesties Interest and Service; beyond the strictest ties of Duty and Allegiance, by the transcendent Favours he had received, that the Pannel in those Circumstances, and in presence of his Royal Highness and Lords of Privy-Council, should design to declame, and *de facto*, declame against, and defame His Majesties Government: To suppose this is absolutely contradictory to the common Principles and Practices of Law, and common Topics of Reason.

And as to *Balmerino's* Case, it is answered, That the Lords of Justiciary are humbly desired to call for, and peruse the said Petition, and Books of Adjournal, which was certainly a defamatory Libel of His Majesties Father, of blessed Memory, and of the States of Parliament in the highest degree; bearing expressly, that there was nothing designed but an innovation of the Protestant Religion, and the subversion and

over-turning the Liberties and Privileges of the Parliament, and the Constitutions of the Articles, and other things of that kind, which made certainly of it self a most villanous and execrable Libel, containing the highest Crimes of *Treason* and *Perduellion*, and was not capable of any good sense or interpretation, but was absolutely pernicious and destructive: So that it is in vain to pretend, that the said Libel did contain Prefaces and Protestations of Loyalty, which no Law regards, even in *simplici injuria & maledictio*, tho committed by a private person, *cum prafatione. salvo honore*, or the like, and which were certainly ridiculous to sustain in a Libel concerning Crimes of *Treason*.

And whereas it is pretended, That tho others were guilty of these Crimes, it does not excuse the Earl: and that the Lords of Privy - Council cannot remit Crimes; and the negligence of the Kings Officers cannot prejudg his Interest. It is answered, The Pannel is very confident, that neither the Lords of His Majesties Privy - Council, consisting of persons of eminent Loyalty and Judgment, nor His Majesties Officers, were capable of any such escape as is pretended: and if the tenor of the Pannel's Explication did in the least import the high and infamous Crimes libelled, as beyond all peradventure it does not, it were strange, how the same being contained in the fore-said vindication, and the whole Clauses thereof justified, that this should have been looked on as no Crime, and allowed to be published. And the Pannel neither does, nor needs to make farther use thereof, but to convince all dis - interested persons, that his Explication can import no Crime.

And whereas it is pretended, That the Crime of *Treason* is inferred from the fundamental Laws of the Kingdom, and from that Clause of the Pannel's Explication, whereby he declares, he is *not bound up by any thing in this Oath not to endeavour any alteration in a lawful way*: which being an indefinite Proposition is equipollent to an univetsal, and is upon the matter coincident with a Clause which was rebellious in its consequences, contained in the Solemn League and Covenant. It is answered, That it is strange, how such a plain and innocent Clause, whereby, beyond all question, he does express no more than was naturally imported in the Oath it self, whether expressed or not, should be made a foundation to import the Crime of *Treason*, which no Lawyer ever allowed, except where it was founded upon express Law & *Luce Meridiana Clavis*: And indeed if such stretches and inferences can make men guilty of *Treason* no man can be secure. And the words in the Pannel's Declaration are plain and clear (yet *non sunt cavillanda*) and import no more, but that, in his station, and in a lawful way, and consistent with the Protestant Religion, and his Loyalty, he might endeavour any alteration to the advantage of Church and State. And was there ever any loyal or rational Subject, that does, or can doubt, that this is the natural import of the Oath? And indeed it were a strange Oath, if it were capable of another sense, and being designed for the security of the Government, should bind up mens hands to concur for its advantage. And how was it possible, that the Pannel, or any other in the capacity of a Privy - Councillor, or a Member of the Parliament, would have satisfied his Duty and Allegiance in other terms? And whereas it is pretended that there was the like case in the pretended League and Covenant, it is answered The Assertion is evidently a Mistake; and tho it were, the Argument is altogether inconsequential: For that League and Covenant was treasonable in it self, as being a Combination entered into without His Majesties Authority, and was treasonable in the glosses that were put upon it, and was imposed by absolute violence on the Subjects of this Kingdom. And how can the Pannel be in the least supposed to have had any respect to the said League and Covenant, when he had so often taken the Declaration, disowning and renouncing it, as an unlawful and sinful Oath, and concurred in the many excellent Laws and Acts of Parliament made by His Majesty, condemning the same as seditious and treasonable? And whereas it is pretended. That the Pannel is guilty of Perjury, having taken the Oath in another sense than was consistent with the genuine sense of the Parliament, and that by the Authority cited he doth *commisso eludere Juramentum*, which ought always to be taken in the sense of him that imposeth the Oath: It is answered, The Pretence is most groundless, and Perjury never was, nor can be inferred, but by the commission, or omission of something directly con-

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trary to the Oath. And altho it is true, That where an Oath is taken, without any Declaration of the exprefs sense of the persons who take it, it obliges *sub pana Perjurii*, in the sense, not of the taker, but of the imposer of the Oath, because expressing no Sense, Law and Reason presumes there is a full acquiescence in the sense and meaning of the imposer of the Oath: and then if an Oath be not so taken, he that takes it is guilty of Perjury. Yet there was never Lawyer nor Divine, Popish or Protestant, but agree in this, That whatever be the tenor of the Oath, if before the taking thereof, the party in exprefs terms does publikly & openly declare the sense in which he takes it, it is impossible it can infer the Crime of Perjury against him in any other sense, this not being *Commen-tum excogitatum*, after the taking of the Oath. And if this were not so, how is it possible in Sense and Reason; that ever any Explication or Sense could solve the Scruples of a mans Conscience? For it might be always pretended, That notwithstanding of the exprefs sense wherein he took it, he should be guilty of Perjury from another sense. And that this is the irrefragable opinion of all Divines, of whatever persuasion, is not only clear from the Authority above-mentioned, even those who allow of reserved senses, but more especially by the universal suffrage of all Protestant Divines, who tho they do abominate all thoughts of Subterfuges or Evasions, after taking of the Oath, yet they do always allow and advise for the safety and security of a doubting and scrupulous Conscience, that they should exprefs and declare, before the taking of the Oath, the true sense and meaning wherein they have freedom to take it; and for which *Sanderfone de Juramento* is cited, *Prelect. 6. Sect. 10. pag. 75.* where his words are, *Sane ut inter Jurandum omnia recte fiant, expedit ut de verborum sensu inter omnes partes quarum interest liquido constet, quod veteribus dictum, liquido Jurare.* And an Oath being one of the highest Acts of Devotion, containing *Cultum Patriæ*, there is nothing more consonant to the Nature of all Oaths, and to that Candor, Ingenuity, and Christian simplicity, which all Law and Religion requires in such cases.

The Kings Advocate's Third Plea against the Earl of Argyle.

HIS Majesties Advocate conceives he has nothing to answer as to depraving, Leasing - making, and mis - interpreting, &c. save that this Oath was only designed to exclude Recusants; and consequently the *Pannel* may thereby be debarred from his Offices, but not made guilty of a Crime. To which he Triplies, 1. If ever the Earl had simply refused, that had been true, but that did not at all excuse from defaming the Law, for a defamer is not punished for refusing, but for defaming.

2. If he had simply refused the Government had been in no more hazard, but if men will both retain their Places, and yet take the same in such words as secure not the Government, it were strange to think, that the design of the Law being to secure against mens possessing who will not obey, that yet it should allow them possession who do not obey. Nor is the Refuser here in a better Case than the Earl, and others, who offered to obey, because it is the defaming the Law, as ridiculous, and inconsistent with that Protestant Religion, and Leasing - making betwixt the King, the Nobility, and the People, the misconstruing, and misrepresenting, as hath been formerly urged, that puts the Earl in a worse Condition. And all those Arguments might be as well urged for any who had uncontrovertedly contravened these Acts, as for the *Pannel*.

Whereas it is pretended, That the King emitted a Proclamation to satisfy Dissenters; it is answered, That the Proclamation was designed for none who had been Members of Parliament, and so should have known the sense; but it was designed for meet ignorants, not for such as had defamed the Law, which is still here charged upon the *Pannel*.

As to the Article of Treason, it is conceived, That it is unanswerably founded upon the Common Law, discharging all men to make alteration of the Government. As to which there needs no express Statute; that being the very essence of Government, and needing no Laws. Like as it falls positively under all the Laws that discharge the assuming the Royal or Legislative Power; For to alter the Government, is inseparably united to the Crown. Like as the Subsumption is as clear, the express words not bearing, That the Earl reserves to himself a power to propose to His Majesty any alterations, or to concur to serve His Majesty in making alterations; but owning in most general and arbitrary terms, to wish and endeavour any alteration he should think fit for the advantage of Church or State, and not determining any thing that could bind him otherwise than according to his own pleasure: For the word (*lawful*) is still subjected to himself, and has subjoyned to it, *as he should think fit*, which governs the whole Proposition; and in that sense, and as the words are here set down, the greatest Rebel in *Scotland* will subscribe that Explanation: For there is no man but will restrict himself to a lawful obedience, providing he be Judge of the lawfulness. And seeing all Oaths proposed for the security of Government require a certain depending upon the Legislator, and not upon the Taker, it is impossible that that end could be attained by any qualification, how special soever, which is made to depend absolutely upon the Taker, and not upon the Legislator. And we have often seen, how little security there is in those specious words, the very Covenant it self having not only the very words above-repeated, but attesting all the world to be witnesses to their Loyalty and Sincerity. And as to the former Instances, *viz.* rising in Arms, or opposing the lawful Successor, there is no Covenanter in *Scotland*, but will say, he will do neither, but in a lawful way, and in his station, and in a way consistent with his Loyalty, for a man were mad to say otherwise: But yet when they come to explain this, they will only do it as they think fit, and will be Judges themselves; and then will tell us, That defensive Arms are lawful; and that no Popish Successor should succeed, nor no Successor unless he subscribe the Covenant. And whereas it is pretended, That no Clause in the *Test* does exclude a man from making alterations; it is answered, That the alterations which the *Test* allows are none at all but in subordination to Authority. And as to the Two Points above-mentioned, it excludes all alterations as to these Points. And as to the making fundamental alterations, this reservation allows to make any alteration; and consequently fundamental alterations; to preclude which Libertinisme this excellent Law was invented.

Whereas it is pretended, That the *Pannel* designs not to add any thing as a part of the Law, but as a part of his Oath, it is replied, Since the Oath is a part of the Law, whoever adds to the Oath, adds to the Law.

Whereas it is pretended, That the Crime of Perjury cannot be inferred here, because all Divines allow, That the Taker of an Oath is still allowed to declare in what sense he takes the Oath; and that this is clear from *Sandersone*, *Pag.* 175. It is triplied, That where there are two dubious senses, Lawyers and Divines allow, That the Taker should clear himself, which of the Two he should take; which is very just, because to which soever of the two he determines himself, the Legislator in that Case is sure of him. But here it is not pretended, That there are two senses; nor does the *Pannel* declare in which of the two he takes it, or in what clear sense at all he takes it, which is indeed *liquido Jurare*. But here the *Pannel* neither condescends, what particular clause of the *Test* is unclear; nor after he has condescended upon the Articles, does he condescend upon the sense, but in general mysterious words, where he can neither be followed, nor found out. He only takes it in so far as it is consistent with it self, and the Protestant Religion, reserving the squaring all by his own Loyalty, as he did in the beginning declare, That he took it in his own sense, By which general sense, neither is the Government secure of any thing it does enjoin, nor could he be punished if he transgressed. Nor can it be doubted, but Perjury may be inferred by any equivocal or evading sense, *inter Jurandum*, as well as by breaking an Oath afterwards: Which is very clear from *Sandersone*, *Pag.* 138. The words whereof are *alterum Perjurii genus est inter Jurandum detorquere verba*; and which is farther clear by the 28. *Page*; but above all, from the Principles of Reason, and the necessity of Commerce and Government: For if men may adhibit such glosses, even whilst they swear,

as may make the Oath useleſs, what way will either Government or Commerce be maintained? And he deceives as much that deceives in ſwearing *ſalvo verbis*, as he who after he has ſworn, does break the Oath; nay and more too, becauſe the breaking may come from forgetfulneſs, or other accidents: but the evading by general Clauſes, which bind no man, does from the firſt Inſtance originally make all Oaths uſeleſs and dangerous, and that this interpretation eludes the Oath abſolutely is very clear from what hath been formerly debated. For It may be argued, That the Earl broke the Oath in ſo far as the firſt day he ſwears the Oath, which bears to be without any evaſion (and muſt be ſo, notwithstanding of whatever he could ſay;) And the next day he gives in this evaſion, which is a down-right violation of that Oath, and inconſiſtent with it. Nor was this Oath forced, but voluntarily emitted, to keep his own Places. And it was the greater Crime that it was done in the Council, becauſe that was to make it the more publick, and conſequently the more to miſrepreſent the Government.

After this debate, which, according to the cuſtom of the Court, was *verbatim* dictat by the Advocats of either ſide, and written by the Clerk, and ſo took up much time, and the Court having ſat, at leaſt twelve hours, without intermiſſion, it adjourned till the next day being Tueſday the 13. of December, at two of the clock in the afternoon: And then the Earl being again brought to the Barr, the following *Interloquutour* (that is judgment and ſentence) of the *Lords of Juſticiary*, on the forgoing debate, was read, and pronounced in open Court.

Edenburgh, December 12. 1681.

The Interloquutour of the Lords of Juſticiary.

THE Lords, Juſtice general, and Commiſſioners of the Juſticiary, having conſidered the Libel and debate, they ſuſtain the defence proponed for the Earl of Argyle, the Pannel, in relation to the perjury libelled, viz. That he emitted this Explanation at, or before his taking the Teſt, firſt before His Royal Highneſſe; His Majeſties High Commiſſioner, and the Lords of His Majeſties Privy Council, relevant, to elude that Article of the Libel.

The Lords ſuſtain the Libel, as being founded upon the common Law, and Explanation libelled, and upon Act 130. Parl. 8. James VI. to infer the pain of Treason.

They likewiſe ſuſtain the Libel, as founded upon the 10. Act, Parl. 10. James VI. to infer the pain of death; and likewiſe ſuſtain that part of the Libel anent *Leaſing-making*, and *Leaſing-telling*, to infer the particular pains mentioned in the ſeveral acts libelled.

And repel the whole other defences, *daplies*, and *quadruples*, and remits the Libel, with the defences anent the Perjury, to the knowledge of an Aſſize.

Thereafter the *Aſſize*, that is the *Jury*, being conſtitut and ſworn, viz.

List of the Aſſizers.

| | | |
|-------------------|---------------------|-----------------------|
| Marquis Montroſs, | E. Roxburgh, P.C. | Lord Bruntisland, |
| E. Middleton, | E. Dumfries, | Laird of Goffoord, |
| E. Airlie, | E. Linlithgow, P.C. | Laird of Claverhouſe, |
| E. Perth, P.C. | Lord Lindoors, | Laird of Balnamoon, |
| E. Dalhouſie, | Lord Sinclair, | Laird of Park Gordon. |

HIS Majesties Advocate adduced four witnesses, to prove the points of the indictment, remitted to the knowledge of the *Affize*, viz. *John Drummond of Lundie*, then Governour of the Castle of *Edenburgh*, now Treasurer-depute, *Sir William Paterfon*, and *Mr Patrik Menzies*, Clerks of the privy Council, and *H. Stevenson*, their Under-clerk: Who deponed, That on the 4. of November, the Earl did give in an unsubscribed Explanation of the Test, which he refused to sign; One of the witnesses also adding, That he heard him make the same Explanation, the day before, in Council, and that it was there accepted.

Then His Majesties Advocate asked, if the Earl would make use of his *Exculpation* for eliding the perjury libelled, to wit, That he had emitted the same Explanation, before taking the Test, in presence of His Royal Highness, and the Council. To which the Earl answered, That, seeing they had sustain'd the Libel, as to the *alleged Treason*, he would not trouble them about the *Perjury*: Especially the matter of fact, referred by the *Interloquutour* to his probation, being of it selfe so clear and notour.

But the truth is, the *Interloquutour* pronounced was so amazing that both the Earl, and his Advocats, were struk with deep silence: For they plainly perceived that, after such a *Judgment* in the case, all further endeavours would be in vain: It being now manifest, that seeing the Earls innocence had so little availed, as that his plain and honest words, purely uttered for the necessary satisfaction of his own conscience, and clearing of his Loyalty, had been construed, and detorted, to infer *Leasing-making*, *Depraving*, and *Treason*; The tongues of men, and Angels (as some of his Advocats also said) could not do any good: And therefore neither did the Earl, nor they Object any thing, either against the *Affizers*, or *Witnesses*, though liable to obvious, and unanswerable exceptions: Nor did the Earl's Advocats, say any thing to the *Affize*, as the custom is, and as in this case they might well have done to take off the force of the *Evidence*, and to demonstrat that the depositions instead of proving the indictment did rather prove the Earle's defences: But, as I have said, they now plainly saw, that all this had been unnecessary work; And, in effect, were of opinion, that after so black, and dreadful a sense put upon what the Earl had spoke and done, in such fair, and favourable circumstances, there could be nothing said, before such a Court, which might not expose themselves to the like hazard, and more easily be made liable to the same misconstruction.

But, upon this silence, the Advocat, taking instruments, Protests (whether in forme only or from a real fear let others judge) for an *Affize of error*, in case the *Affizers* should *Affoil* or acquit. Whereupon the *Affize* removing vvas inclosed: And, after sometime, returned their *Verdict*, vvhich vvas read in open Court of this tenour.

The Verdict of the Assize.

THE Assize having elected, and chosen the Marques of Montrose to be their Chancellor, they all in one voice find the Earl of Argyle guilty, and culpable of the Crimes of Treason, Leasing-making, and Leasing-telling. And find, by plurality of votes, the said Earl innocent and not guilty of Perjury.

And then the Court again adjourned: And the Privy-Council wrote the following Letter to His Majesty.

Halyrudhouse, December 14. 1681.

*The Councils Letter to the King, desiring leave to pronounce
Sentence against the Earl of Argyle.*

May it please Your Sacred Majesty.

IN Obedience to your Majesties Letter, dated the 15th of November last, we ordered your Majesties Advocate to insist in that Proceß, raised at your Instance, against the Earl of Argyle: And having allowed him a long time for his appearance, and any Advocates he pleased to employ, and Letters of exculpation, for his Defence; He, after full Debate, and clear Probation, was found guilty of Treason, Leasing-making betwixt your Majesty, your Parliament, and your People, and the reproaching of your Laws and Acts of Parliament. But because of your Majesties Letter, ordaining us to send your Majesty a particular account of what he should be found guilty of, before the pronouncing of any Sentence against him, we thought it our duty to send your Majesty this account of our, and your Justices proceedings therein; And to signify to your Majesty, with all Submission, That it is usual, and most fit for your Majesties service and the Advantage of the Crown, that a Sentence be pronounced, upon the Verdict of the Assize, without which the proceß will be still imperfect. After which, your Majesty may, as you in your Royal Prudence, and Clemency shall think fit, Ordain all farther execution to be sisted, during your Majesties pleasure: Which shall be dutifully obeyed by.

Your Majesties most Humble,

Most Faithful,

and most Obedient,

Subjects and Servants

Sic Subscritur,

| | | |
|-----------------------|-------------------------|-----------------------|
| <i>Alex. St. And.</i> | <i>Roxburgh,</i> | <i>Dalziel,</i> |
| <i>Athol,</i> | <i>Dumfries,</i> | <i>Geo. Gordon,</i> |
| <i>Douglas,</i> | <i>Strathmore,</i> | <i>Ch. Maitland,</i> |
| <i>Montrose,</i> | <i>Airlie,</i> | <i>Geo. McKenzie,</i> |
| <i>Glencairn</i> | <i>Ancram,</i> | <i>G. McKenzie,</i> |
| <i>Wintoun</i> | <i>Livingstoun,</i> | <i>Ramsay,</i> |
| <i>Linlithgow,</i> | <i>Jo. Edinburgens.</i> | <i>J. Drummond.</i> |
| <i>Perth,</i> | <i>Elphinstoun,</i> | |

The

THE Earl, as well as the Lords of privy Council, waited some dayes for the Answer of this Letter: But the Earl making his escape, a day or two, before it came, I shall take occasion to entertain you, in the mean time, with an account of some thoughts that the Earl had set down in writing, in order to some discourse he intended to have made to the Lords of Justiciary, before their pronouncing sentence. And then, I shall subjoyn the motives, and arguments, which (as he hath since informed some of his friends) did induce him to make his escape: Which, with what I have said before, will give you a full account of all matters, till His Majesties return came, and the sentence past.

And first, he takes notice, that on Moonday the twelfth of *December*, the day of his arraignment, the *Court* adjourned, before he was aware: And it being then late, about nine of the clock, and after a *federunt* of twelve houres, He did not imagine, they would have proceeded further, that night; But only heard afterwards that they sat it out till two or three after midnight: And was surpris'd the next morning, to understand, that without calling him again, or asking at him, or hearing, or considering his own sense of his own words, they had not only found the Libel relevant, but repelled his defences, and with one breath rejected all his most material reasons of *exculpation*, root and branch. This seemed hard, though the words had been worse, and no way capable of a favourable construction (which none, no not the judges themselves, can be so void of sense as to think really they were not) and this was so far beyond all imagination, that, neither the Earl, nor his Advocats did ever dream it could fall out, though all was not said might have been said, nor what was said so fully enforced as the Earls Advocats could easily have done, if the case had not been thought so very clear, and the Earl his innocence so obvious, and apparent, and they unwilling unnecessarily to irritate many concerned.

This great haste, and strange proceeding, did so surprise, and astonish him (as I have said) that it caused him, the next day when the Sentence was read, to keep deep silence, and suffer the *Interloquuntour* to be pronounced, the *Affizers* chosen, and sworn, and the *Witnesses* received, and examined, without once offering to say, or object any thing, or so much as inquiring, at either *Affizers*, or *Witnesses*, whether they had not been tampered with, and practised by promises, and threatnings, or whether some of them had not previously, and publicly declared themselves in the Case, and others of them had not partially advised, and solicited against him; Which, as they are just, and competent *exceptions*, So he was able to have proven them, against most of them, instantly, and fully.

And indeed as to such of the *Affizers* as were *Councillors*, (whom for your better information, I have marked in the list of *Affizers* thus *P. C.*) and had first ordered his imprisonment, next signed the Letter to His Majesty, and then ordered the *Process*, and therein manifestly fore-stalled their own judgment (had they done no more) it was a wonder, beyond parallel, That, neither their own honour, nor the common

common decency of justice, nor even His Majesties Advocate's interest, did prevent their being impannelled on that *Affize*.

But the truth is, the Earl did so far neglect, and abandon himself, and give way to the Court, that he did not so much as open his mouth, to clear himself of the *Perjury* laid to his charge, which yet God Almighty was pleased to do, by the plurality of voices of the same *Affize*, who it appears plainly did bear him little kindness: For whereas *Affizers* do usually return their Verdict, *proven or not proven* rather than *guilty or not guilty*, and ought alwise to do so, where the relevancie is *in dubio*, and especially in a case of this nature, in which the alledged treason is no *ouvert act*; and indeed no *act*, nor so much as a real ground of offence, But plainly such a subtile, chimerical, and non-sensical consequence, that the finding it doth quite surpass the comprehension of all unbyassed men; it might have been expected that persons of their quality would have chosen the more moderate form of *proven or not proven*, and not involved themselves unnecessarily upon Oath in adjudging the relevancy of a guilt, which so few are able to imagine, and none will ever make out; Yet you see in their *Verdict*, that all in one voice they did find the Earl *guilty*, in the most positive, and strong form: Adding, for superabundance, *culpable*, for sooth, the better to demonstrate their good will. Nor is it unworthy of remark, that when such of the *Affizers* as were present at the Council declared the Earl innocent of the *Perjury* (which His Majesties Advocate did only pretend to infer from the Earls alledged silence, or not speaking loud enough, the first day, when he signed the *Test*.) Because they heard him, at the same time, pronounce his explanation: Yet some other *Affizers* that were no *Councillors*, and knew nothing of that matter of fact, but by *hear-say*, without all regard to the witnessing of these *Councillors* their fellow *Affizers*, voted him *guilty*: And so took it formally on their consciences, that he had said nothing, in the Council, at his taking the *Test*; Albeit all the Council knew the contrary (by which they are clearly perjured) nay such was the earnestness of some (who thought it scarce possible to carry the treason upon words so safe and innocent) to have the Earl found guilty of *Perjury*, that it was particularly recommended to His Majesties Advocate to get him made guilty of that point, to render him for ever incapable of *publik employment*. And the Clerk of the *Affize* was so concerned in it that He twice misreckoned the votes, before he would yeeld that the Earl was *assoyled*, or acquit of the *Perjury*. And this, among other things, may serve to clear, how that whole matter was influenced, and managed: For, as the Earl cannot be charged with *Perjury*, the second day, because he swore none at all; So as little the first day, seeing whether he took the *Test* with an Explanation (as certainly he did,) or simply without saying any thing; It is equally apparent, there was no *Perjury* in the case: But it appears, thir *Affizers* were of the Opinion, that the *Indictment* or Libel alone (as it was indeed the only evidence) was a sufficient proof of the Earl his being guilty of *Perjury*. And indeed for any other Rule or Reason that occurs, They might as well have found him *Guilty* of the *Perjury* as of the *Treason*: But the *Affizers* that were *Councillors* being under a Particular check, apprehending they might be found perjured themselves, if they had not acknowledged the hearing of the words, that all others present could have attested to have been audibly

spoken, and some of themselves had confessed to have heard, before they knew the tenor of the Libel; And, the great crime of *Treason* being sufficient to do the *Job*, it is like they judged it advisable to give this insignificant *absolution from Perjury*. That their *Verdict of Treason* might have the greater colour, and shew of candor, and sincerity. However it seems to be without measure hard to be prosecuted with such a deadly *Dilemma* of either *Treason or Perjury*, for you see, in their account, if the Earl swear with an *Explanation*, his *Life* is knockt down by *Treason*, and if without an *Explanation*, his *Honour*, which is dearer to him than his *Life*, is run thorow with *Perjury*. But, to compleat a fancie beyond bedlam, The *Advocate* urges, and several *Affiziers* agree, at the same time, to condemn the Earl as *Perjured*, for not *Explaining*, and for *Treason*, for *Explaining*: *Quis talia fando?*

In the next place, the Earl's Papers contain some *thoughts*, and *endeavours*, to remove certain mistakes, which, he had good ground to believe, did so much prompt, and precipitate the Judges to pronounce so important a sentence against him, upon so weak and sandy foundations, and which were indeed either meer fancies, or so frivolous that though they were true they could never excuse them before men, far less exoner them before God Almighty. Where, laying down a true ground, *that nunquam concluditur in criminalibus*, &c. and withall representing, how his *Advocats* were questioned, in so extraordinary a manner, for *signing their opinion* (which you have above *Num. 32*. Where you may see how fair, just, and safe it was) that now they dar no more plead for him, *He sayes*, He cannot be denied to plead for himself, as he best may.

The first ground of mistake then that he was to represent was that he knew it had been told them, it was very much *His Majesties Interest*, and necessary for *the support of the Government*, to devest, and render him incapable of publik trust: Which words had been oft said, and said to himself to perswade him there was no further rigour intended: But as he is very confident, our gracious King will never, upon any such pretence, allow any innocent person to be condemned, far less to be destroyed, in a picque or frolik, where his Majesty can reap no advantage; So he is perswaded, His Majesty hath no design to render him miserable, far less to cut him off, without a cause. And therefor concludes, it is only his misfortune, in his present circumstances, never having access to, nor being heard by His Majesty, nor the case perfectly understood by him, that hath made His Majesty give so much as way to *a process to be raised or led*, far less to a *Sentence* to be pronounced against him. But in effect, as this affair hath been managed all alongs, and *so many* engaged, in so extraordinary wayes, to act, and write against him, first and last, nothing should appear strange or surprizing: However, as their own consciences, and God Almighty, knows how they have been brought to medle, and act, as they have done, So, one day or other, the world may likewise know it:

A second ground of mistake, which, he *say's* may impose upon them, is a confidence of his Majesties *pardon* intended for him, a pretence only given out to render the *condemnation* more easy; yet indeed least wished for by those who where readiest to spread the report, and whereof the Earl had indeed more confidence than any that talked of it, if His Majesty were left to himself, and had the Case fully, and truly represented

sent to him: but as His Majesty needs not this false occasion to make his clemency appear, which is so well known over all his Dominions, by far more true and genuine discoveries, so it were the height of injustice in their *Lordships of the justiciary* to proceed to sentence against him, upon such *apprehensions*, in case in their hearts they beleve him innocent (as he certainly knowes they doe) besides, they cannot but see, their acting, upon so unjust a ground, will not only stain their names, and memories, but instead of alleviating rather aggravat their guilt, both in their own *consciences* when they reflect on it *in cold blood*, and in the sight of God *Almighty*: And if His Majesty, on *importunity and a third application*, should give way to *execution*, as he hath already given way, first to the *process*, and then to the *sentence*; or if (as some may design) *execution* shall be adventured on, without the formality of a *new order* (as the *process* was at first commenced, before His Majesties return, and so is not impossible) would not their Lordships be as guilty of his blood as if they had cut his throat?

And in effect, these are the *grounds and excuses* pretended, at this day, *in privat*, by such of his *Judges*, for their procedour, who are not yet come to have the Confidence, at all Occasions, to own *directly* what they have done.

A third reason why his *Exculpation* was not allowed, *he says*, might be, because the sustaining of it might have brought other *Explanations* above board, and discover both these who had made, and those who had accepted them, and perhaps not have left *their own bench* untouched. But as this Artifice will not keep up the *Secret*; And as this way of *shifting* is neither just nor equall, so to all interested it is the meanest of *Securities*; For His Majesties Advocate hath already told us, that His Majesties *Officers* can never wrong him: And although the *Lords* and *He* should conceal what others had done, it might make themselves more guilty, But not prove any *Exoneration* to those concerned, without a down-right *Remission*: Whereas it is manifest, that if *their Lordships* had admitted the Earl's *Exculpation*, upon the sure and evident grounds therein contained, it would not only have answered the *Justice* of his case but vindicated all concerned.

And lastly, he was to tell them, that possibly they might be inclined to go on, because they were already so far engaged as they knew not how to retreat with their honour: but, as there can be no true honour where there is manifest wrong, and injustice, so, in the frail and fallible condition of human things, there can be no delusion more dangerous, and pernicious then this, that *unum scelus est alio scelere tegendum*. And here, the Earl thought to lay before them, very plainly and pertinently, some remarkable and excellent Rules, whereby *L. Chief justice Hales*, a renowned judge of our neighbour nation, tells he did govern himself, in all criminal cases, which (adds the Earl) if they took a due impression, would certainly give them peace, and joy, when all the vain considerations that now amuse will avail them nothing.

The Rules are these

I. Not to be rigid in matters purely consciencious, where all the harm is diversity of judgment.

M 2

II. That

II. That Popular, or Court applause, or distaste, have no influence on any thing is to be done, in point of distribution of justice.

III. In a criminal case, if it be a measuring cast, then to incline to mercie and acquital.

IV. In criminal things, that consist only of words, where no more harm ensues, moderation is then no injustice.

V. To abhor all privat solicitations, of what kynd soever, and by whomsoever.

VI. In maters depending, not to be solicitous what men will say or think, so long as the rule of justice is exactly kept.

VII. And lastly, never to ingage themselves in the begining of a cause, but reserve themselves un-prejudged, till the whole bussines be heard.

Then the Earl goes on, and makes notes, for additional defences, reducible to these heads.

I. The absolute innocence of his Explication, in its true, and genuine meaning, from all crime or offence, far more from the horrible crimes libelled.

II. The impertinency, and absurdity of His Majesties Advocat's arguings, for inferring the crimes libelled from the EarPs words.

III. The reasonableness of the Exculpation.

IV. The EarPs Answers to the Advocat's groundlesse pretences for aggravating of his case.

As to the first, the Earl, waving what hath been said, from common reason, and humanity it self, and from the whole tenour, and circumstances of his life, comes clost to the point by offering that just, and genuine Explanation of his Explication which you have above Num. 21.

I have delayed hitherto to take the Oath appointed by the Parliament to be taken, betwixt and the first of January next: But now being required, near two moneths sooner, to take it this day peremptorily, or to refuse: I have considered the Test, and have seen several objections moved against it, especially by many of the Orthodox clergie, notwithstanding whereof, I have endeavoured to satisfie my self with a just explication, which I here offer, that I may both satisfie my Conscience, and obey Your Highness, and Your Lordships Commands in taking the Test, though the Act of Parliament do not simply command the thing, but only under a certification, which I could easily submit to, if it were with Your Highness favour, and might be without offence; But I love not to be singular: and I am very desirous to give obedience in this and every thing, as far as I can, and that which clears me is that I am confident, what ever any man may think or say to the prejudice of this Oath, the Parliament never intended to impose contradictory Oaths, and because their sense (they being the framers and imposers) is the true sense, and that this Test, enjoyned, is of no privat interpretation: nor are the Kings Statuts to be Interpreted, but as they bear, and to the intent they are made, therefore I think no man, that is no privat Person, can Explain it for another, to amuse or trouble him with (It may be) mistaken glosses: But every man, as he is to take it, so is to explain it, For himself, and to endeavour to understand it, notwithstanding all these exceptions, in the Parliaments which is its true, and genuine sense; I take it therefore, notwithstanding any scruple made by any, As far as it is consistent with it self, and the Protestant Religion, which is wholly in the Parliaments sense and their true meaning; Which (being present) I am sure, was owned by all to be the securing of the Protestant Religion, founded on the Word of God, and contained in the Confession of Faith recorded J. 6. p. 1. c. 4. And not out of Scruple as if any thing in the Test did import the contrair: But to clear my self from Cavils, as if thereby I were bound up further then the true meaning of the Oath; I doe declare that by that part
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of the Test, that there lyes no Obligation on me &c. I mean not to bind up my self in my station, and in a lawfull way; still disclaiming all unlawfull endeavours. To with, and endeavour any alteration, I think, According to my conscience, to the advantage of Church, or State, not repugnant to the Protestant Religion, and my Loyalty: And by my Loyalty I understand no other thing then the words plainly bear, to wit the duty and allegiance of all Loyal Subjects; and this Explanation I understand as a part, not of the Test or Act of Parliament, but as a qualifying part of my Oath that I am to swear, and with it I am willing to take the Test, if your Royall Highness and your Lordships allow me. Or otherwise, in submission to Your Highness and the Councils pleasure, I am content to be held as a refuser, at present.

Which Explanation doth manifestly appear to be so just, and true, without violence or straining, so clear & full without the least impertinency, so notour and obvious to common sense, without any Commentary, so Loyal, and honest, without ambiguity, and lastly so far from all, or any of the crimes libelled that it most evidently evinceth that the words thereby explained are altogether innocent: And therefore it were lost time to use any arguments to enforce it.

Yet seeing this is no trial of wit, but to find out Common sense, let us examine the Advocats fantastical *paraphrase*, upon which he bottoms all the *alleged crimes*, and see whether it agrees, in one jot, with the true and right meaning of the Earl's words; and (as you may gather from the indictment) It is plainly thus.

I have Considered the Test; which ought not to be done, And am very desirous to give obedience, as far as I can, but am not willing to give full obedience; I am confident, the Parliament never intended to impose contradictory Oaths; that is, I am confident they did intend to impose contradictory Oaths; And therefor I think no man can explain it but for himself; that is to say, every man may take it in any sense he pleases to devise, and thereby render this Law, and also all other Laws, though not at all concerned in this affair, useless: And so make himself a Legislator, and usurp the supreme Authority: And I take it, in so far as it is consistent with it self, and the Protestant Religion, whereby I suppose that it is not at all consistent with either; nor was ever intended by the Parliament it should be consistent: And I declare that, by taking this Test, I mean not to bind up my self, in my station, and in a lawfull way, to wish, or endeavour any alteration, I think, to the advantage of Church, or State, not repugnant to the Protestant Religion, and my Loyalty: Whereby I declare my self, and all others, free from all obligation to the Government, either of Church, or State, as by law established, and from the duty, and Loyalty of good Subjects; Resolving of my self to alter all the Fundamentals, both of Law, and Religion, as I shall think fit: And this I understand as a part of my Oath: that is as a part of the Act of Parliament, by which I take upon me, and usurp the Royal Legislative power.

Which sense and Explanation as it consists of the *Advocat's* own words, and was indeed, every word, necessary to infer these horrible crimes contained in the *Indictment*, So, to speak with all the modesty that truth will allow, I am sure, it is so violent, false, and absurd, that the greatest difficulty must be to believe that any such thing was alledged, far more received, and sustained in Judgment, by men professing only Reason, far less Religion.

But thirdly, if neither the Earl's true, genuine, and honest sense, nor this violent, corrupt, and false sense, will satisfy, let us try what *transprof-*

ing the Earl's *Explanation* will do, and see how the just contrary will look. — And it must be thus.

I Have considered the Test, nor am I at all desirous to give Obedience, so far as I can; I am confident the Parliament intended to impose contradictory Oaths; And therefor I think, every man can explain it for others, as well as for himself, and take it, without reconciling it, either to it self or his own sense of it: And I doe take it, though it be inconsistent with it self, and the Protestant Religion: And I declare, that I mean thereby to bind up my self never (either in my station, or in any lawfull way whatsoever) to wish, or endeavour, in the least, any alteration, tho to the advantage of Church, or State, and tho never so suitable, and no way repugnant, to the Protestant Religion, and my Loyalty: And, though this be the expresse quality of my swearing, yet I understand it to be no part of my Oath.

Now whether this contradictory conversion be not treason or highly criminal, at best, I leave all the World to Judge; and to make both sides of a contradiction, that is both the *Affirmative* and *Negative* of the same proposition, treason is beyond ordinary Logik. Escobar finds two contrary wayes may both be probable and safe wayes to go to heaven, but neither he nor the Devil himself have hitherto adventured to declare two contradictory propositions both damnable, and either of them a just cause to take away mens Lives, Honours, and Fortunes.

But where the disease is in the will it is lost Labour to apply Remedies to the understanding; and must not this be indeed either the oddest treason, or strangest discovery that ever was hear'd of? The Bishop of *Edinburgh* sees it not, witness his *Vindication* saying the same, and more; Nor many of the Orthodox Clergie, witness their *Explanations*, Nor his Royall Highness, in privat, nor at first in Council nor all the Councillors, when together at the Council-board, Nor the President of the Council nor the then President of the Session (now Chancellour) though He rose from his seat, to be sure to hear, nor any of the most learned lawyers, witness their signed Opinion, nor the most learned of the Judges on the bench, nor the Generality of the knowing persons, either in *Scotland*, or *England*: wonderfull treason one day seen by none, another day seen by so many! A stander-by hearing the trial, and the Sentence, said, he beleev'd the Earl's words were by Popish magik transubstantiat, for he saw them the same as before; Another answered, that he verily thought it was so, for he was confident, none could see Treason in the words that would not, when ever it was a proper time, readily also profess his beleefe of transubstantiation, but he beleev'd many that professed both beleev'd neither.

The second Head of the Earl's additional defences contains the impertinencies, & absurdities of the Advocats's *Arguings*: And here you must not expect any solid debate, For as there is no disputing with those that deny Principles, so as litle with those who heap up Phantastical, and inconsequential inferences, without all shadow of Reason. If a stone be thrown though it may do hurt, yet having some weight it may be thrown back, with equall or more force: But if a man trig up a feather, and sling it, It is in vain to throw it back, and the more strength the less success: It shall therefor serve, by a cursory discourse, to expose his arguments, which

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are in effect easier answered then understood; and, without any serious arguing, which they cannot bear, rather leave him to *be wise in his own eyes* then by too much empty talk hazard to be *like him*.

He alledges first, that *the Earl*, instead of taking the Test in its plain and genuine meaning, as he ought, doth declare against, and defame the *Act* that enjoyned it, which is certainly a great crime: But now? In as much, sayes the Advocate, as he tells us, That he had considered the Test: Which I have indeed hear'd say was his greatest crime, and that he ought to have taken it, with a profound and devout ignorance, as some of our most inventive Politicians boasted they had done. But the Earl sayes, that he was desirous to give obedience, as far as he could; whereby, sayes the Advcat, He insinuates that he was not able to give full obedience. This is not the meaning; but what if it were, and that indeed he could not? Have not thousands given no obedience yet even in law are guiltlesse? And ought not that to please his Highnesse, and the Council, that is accepted of God Almighty, and is all any Mortal can perform? But the Earl, sayes the Advocate, Goes on, that he was confident the Parliament never intended to impose contradictory Oaths; whereby, sayes the Advocate, He abuses the people with a beleef that the Parliament did intend to impose such. Wonderfull reasoning! All men know that Parliaments neither are, nor pretend to be infallible: And in our present case, hundreds of Loyall subjects complain of contradictions, and inconsistencies, some way or other, crept into this Oath; And even the Council have yeelded, so far, to their Exceptions, as to make an alteration upon it, for satisfying those scruples, far beyond any thing the Earl said; and such an alteration, as, I beleieve, few dreamed of, and I am certain none durst have attempted, without their expresse command and Authority: and yet, in the midst of all this, the Earl's charitable, and honest Opinion, in behalf of the Parliaments good intentions, must be perverted to a direct slander. But, the Earl sayes That every man must explain it for himself; And so, no doubt, he must, if the Test be either in itself, or in his apprehension, ambiguous, otherwise how can he swear in Judgment? But this the Advocate will have to be a mans own sense, and thereupon runs out, That Hereby this Law, and Oath, and all Laws, and Oaths are rendered useles, and to no purpose: And further the legislative Power is taken from the Imposer, and settled in the Taker of the Oath, Which certainly is a most treasonable presumption. But first, although there be no Reason to strain, or mistake the Expression, yet the Earl did not say, That every man must take the Test in his own sense.

II. The Council hath now explained the Test, for the clergy: Might not then the Earl, before their Explanation was devised, say, by the Councils allowance, which he had, That he might explain it for himself? For if an ambiguous proposition, (the Test for example) may be reconciled to it self, two different wayes, must not the Taker reconcile it, as in his own sense he thinks it doth best agree with the genuine meaning of the words themselves, and with the sense, he conceaves, was intended by the Parliament that formed it; especially before the Parliament emitt their own Explanation? And is it not juster to do it so then in any other mans sense, which he thinks agrees less with the words, albeit they may be thought by others to be reconciliable another way?

III. All this looks like designed mistakes and traps; for should any man

man swear, unless he understand? And where an Oath is granted to be ambiguous, can any man understand, unless, in want of the imposers help, he explain it for himself?

I V. Was ever a man's *Explaining* an Oath for himself, before taking it, far less his *bare saying* that he must explain it, before he take it, alledged to be, *The overturning of all Laws, and Oaths, and the usurping of the Legislative power, and making of new Laws?* certainly to offer to answer such things were to disparage common Reason.

And lastly this is strange Doctrine from the Advocate, who himself, in Council, did allow, not only the Earl his *Explanation*, but that *Explanation to the Clergie*, contrary, as appears by their Scruples, to what they that took it thought either the *Parliaments* design or the plain words of the *Test* could bear, and certainly different from the sense many had already taken it in, and wherein others were commanded to take it. And what ever the Advocate may cavil to insnare the Earl, sure he will not allow that by his *explaining* this Oath he himself hath taken on him the *Legislative power* of the Parliament. far less, though he should acknowledge it, will any believe that he hath, or could thereby *make all Laws or Oaths useles*. By this you see what strange stuffe he pleads which deserves no answer.

But, says the Advocate, the Earl affirms, *He takes the Test, only as far as it consists with it self, and with the Protestant Religion, by which he most maliciously insinuates that it is inconsistent with both.* But, first this only is not the Earl's but the Advocate's addition. 2^d I would soberly ask the Advocate, or any man, whether the *Test*, as it includes the *Confession* in general, and consequently all contained in it, was not either *really*, or at least might not have been *apprehended* to be inconsistent with it self? Else what was the use or sense of the *Councils explanation*, wherein it is declared, that men doe not swear to *every proposition of the Confession*, but only to the *Protestant Religion* therein contained? And if it was either inconsistent, or apprehended to be so, how could the Earl, or any honest man swear it in other terms, with a *safe Conscience*? But thirdly. If *Parliaments* be fallible, and this Oath, as being ambiguous, needed the *Councils Explanation* to clear it from *inconsistencies*, must the Earl's words, when he was to swear, that he took it in *so far as it was consistent*, be in this case understood as spoken *maliciously*, and with a criminal intent, when all *Sense, Reason, and Religion*, made this caution his duty? And if it be so criminal for one going to swear to suppose a possibility of *inconsistencies* in it, Is it not manifestly more criminal in others plainly to confess, and grant that there are *inconsistencies* in it, after they have swallowed it in gross, without any explanation whatsoever?

But, says the Advocate, *The Earl hath invented a new way, where by no man is at all bound to the Test; For how can any man be bound, if he will obey only as far as he can?* And yet, it will be hard even for the Advocate, tho he sometimes attempts indeed more then he and all the World with him can do, to tell how a man can obey farther: and I am sure, that in a matter of this kind, viz. the free tender of an Oath, all discreet men will Judge the Earl's offer both frank and obliging. Then he asks, *To what the Earl is bound, if he be bound no further then he himself can obey?* manifest confusion! and never either spoke by the Earl, nor at all pertinent to his case; besides he freely acknowledges, that all men are bound to more then they

they can do) or so far as the Test is consistent with it self, and the Protestant Religion (a strange doubting or! yet, I dare say, imports as much as his Majesty expects of any, and more then the Advocate will ever perform) But, sayes the Advocate, *who can determine to what the Earl is bound?* Which sayes plainly, that either the Test agrees with it self, and the Protestant Religion in nothing, or that the Protestant Religion is nothing, Both which the Earl thinks far from truth. But the Advocate's reasoning reflects far more on the Councils Explanation, where it is plainly said, *That the Confession is not sworn to in the Test, but only the Protestant Religion contained in the Confession, so that the Protestant Religion indefinitely is that which is said to be sworn to:* Now, pray, is it not much worse for a man to say, *that by taking the Test he swears only to the Confession as it contains or agrees with the Protestant Religion* (which is in effect to set the Protestant Religion at variance with its own Confession, and so to reproach and ranverse the standard, & make void the very security that the Parliament intended) then to say, *That he swears the Test as it agrees with it self & the Protestant Religion,* which imports no such insinuation? But from these pleasant Principles He jumps in to this Fantastick Conclusion, *That therefore it cannot be denied but the Earl's interpretation destroyes, not only this Act, but all Government, and makes every mans conscience or humour the Rule of his obedience.*

But first, as to the whole of his arguing, the Earl neither invents, sayes, nor does any thing, except that he offered his Explanation to the Council, which they likewise accepted. 2ly. What mad inferences are these, *You say, you will explain this Oath for your self, therefore you overturn all Government, and what not?* Whereas it is manifest, on the other hand, that if the Earl apprehending, as he had reason, the Oath to be ambiguous, and in some things inconsistent, had taken it without explaining it for himself, or respect to its inconsistency, it might have been most rationally concluded, that in so doing he was both *impious and perjured.* 3ly. It is false, that the Earl doth make his Conscience, any other way, the rule of his obedience, then as all honest men ought to do: That is, as they say, *To be Regula regulata*, in conformity to the undoubted *Regula regulans*, the eternal rules of truth and righteousness, as is manifest by his plain words. As for what the Advocate insinuates of *humour* instead of *Conscience*, it is very well known to be the Ordinary reproach whereby men that have no *Conscience* endeavour to defame it in others.

But the Advocate is again at it, and having run himself out of all consequences, he insists and inculcats, *that the Earl hath sworn nothing.* But, it is plain that to swear nothing is none of the crimes libelled. 2ly. The Earl swears positively to the Test as it is consistent with it self and the Protestant Religion, which certainly is something; unless the Advocate prove, as he insinuates, that there is nothing in the Test consistent with either. And 3ly. if the Protestant Religion, and the Earl his reference to it be nothing, then is not only the Council sadly reproached, who, in their Explanation, declare this to be the only thing sworn to, in the first part of the Test, but our Religion quite subverted, as far as this Test can do it.

But next for the *treason*, the Advocate sayes, *That the Earl expressly declares, he means not by the Test to bind up himself, from wishing, or endeavouring, in his station, and in a lawful way, any alteration he shall think for the advantage of Church, or State; whereby, sayes he,*

the Earl declares himself, and others, loosed from any obligation to the Government, and from the duty of all good Subjects, and that they may make what alterations they please. A direct contrariety, instead of a just consequence; as if to be tyed to Law, Religion, and Loyalty, were to be loosed from all three; can there be a flatter and more ridiculous contradiction? Next the Advocate pretends to found upon the fundamental Laws of this, and all nations, whereby it is treason for any man to make any alteration he thinks fit for the advantage of Church or State. But first, The Earl is not, nor cannot be accused of so much as wishing, much less endeavouring or making any alteration, either in Church or State, only he reserves to himself the same freedom, for wishing, which he had before his Oath, and that all that have taken it do in effect say they still retain. 2ly. For a man to endeavour, in his station and in a lawful way, such alterations in Church, or state, as he conceives to their advantage, not repugnant to Religion, and Loyalty, is so far from being treason that it is the duty of every subject, and the sworn duty of all His Majesties Counsellors, and of all Members of Parliament: But the Advocate by fancying, and misapplying Law of Nations, wresting Acts of Parliaments, adding, taking away, chopping and changing words, thinks to conclude what he pleases. And thus he proceeds, That the treason of making alterations is not taken off by such qualifications, of making them in a lawful way, in ones station, to the advantage of Church, or State, and not repugnant to Religion or Loyalty. But how then? Here is a strange matter! Hundreds of alterations have been made, within these few years, in our Government, & in very material points, & the Kings best Subjects, and greatest Favourites, have both endeavoured, and effectuated them: And yet, because the things were done according to the Earls qualifications, instead of being accounted treason they have been highly commended & rewarded. The Treasury hath been sometimes in the hands of a Treasurer, sometimes put into a Commission, backward and forward: And the Senators of the Colledge of Justice (the right of whose places was thought to be founded on an Act of Parliament giving His Majestie the Prerogative onely of presenting) are now commissioned by a Patent under the great Seal, both which are considerable alterations in the Government, which some have opposed, others have wished and endeavoured, and yet without all fear of treason, on either hand; only because they acted according to these qualifications, in a lawful way, and not repugnant to Religion and Loyalty. But that which the Advocate wilfully mistakes (for it is impossible he could do it ignorantly) is, that he will have the endeavouring of alterations in general not to be of it self a thing indifferent, & only determinable to be good or evil by its qualifications (as all men see it plainly to be) but to be, forsooth, in this very generality intrinsically evil; a notion never to be admitted on earth, in the frail and fallible condition of human affairs. And then he would establish this wise Position by an example he adduces, That rising in arms against the King (for so sure he means, it being otherwise certain that rising in arms in general is also a thing indifferent, and plainly determinable to be either good or evil as done with or against the Kings Authority) is treason, and sayes, If the Earl had reserved to himself a liberty to rise in arms against the King, though he had added in a lawful manner, yet it would not have availed, because, (and he sayes well) This being in it self unlawful the qualifications had been but shamms and contrarie

contraria facto. But why then doth not his own reason convince him, where the difference lyes? viz. That *rising in arms against the King* is in itself unlawful, whereas endeavouring alterations is only lawful, or unlawful, as it is qualified; and, if qualified in the Earl's *Terms*, can never be unlawful. But, sayes the Advocate, *The Earl declares himself free to make all alterations*, and so he would make men beleve that the Earl is for making *All or Any*, without any reserve, whereas the Earl's words are most expresse, that he is, *Neither for making all or any, but only for wishing and endeavouring for such as are good, and lawful, and in a lawful way*, which no man can disown, without denying common reason, nor no sworn Councellour disclaime, without manifest perjury. But the Advocate's last conceit is, *That the Earl's restriction is not as the King shall think fitt, or as is consistent with the Law, but that himself is still to be judge of this, and his Loyalty to be the standard*. But first, The Earl's restriction is expressly *according to Loyalty*, which in good sense is the same with *according to Law*; and the very thing that the King is ever supposed to think. Secondly, as neither the Advocate, nor any other, hitherto, have had reason to distinguish the exercise, and actions of the Earl's Loyalty from those of His Majesties best Subjects, so is it not a marvellous thing that the Advocate should professe to think (for in reality he cannot think it) the Earl's words, *His Loyalty*, which all men see to be the same with his duty, and fidelity, or what else can bind him to his Prince, capable of any quible, far more to be a ground of so horrid an accusation? And whereas the Advocate sayes, *The Earl is still to be judge of this*; It is but an insipid calumny, it being as plain as any thing can be that the Earl doth nowise design *His thinking* to be the rule of right, and wrong, but only mentions it as the *necessary application* of these excellent, and unerring rules of *Religion, Law, and Reason*, to which he plainly refers, and subjects, both his thinking and himself, to be judged accordingly. By which it is evident, that the Earl's *restriction* is rather better, and more dutyful then that which the Advocate seems to desiderat. And, if the Earl's *restrictions* had not been full enough, it was the Advocate's part, before administering the Oath, to have craved what more he thought necessary, which the Earl, in the case, would not have refused. But it is beleev'd, the Advocate can yet hardly propose *restrictions* more full and suitable to duty then the fore-mentioned of *Religion, Law, and Reason*, which the Earl did of himself profer. As for what His Majesties Advocate add's, *That under such professions, and reserves, the late Rebellions, and disorders, have all been carried on, and fomented*; It is but meer vapour; for, no rebellion ever was, or can be, without a breach of one, or other of the Earl's Qualifications; which doth sufficiently vindicat that part of the Earl's Explanation.

The Advocate insists much, that *Any* is equivalent to *All*; and that *All* comprehends *Every* particular under it; which he would have to be the deadly poyson in the Earl's words: And yet the Earl may defy him, and all his detractors, to find out a case of the least undutyfulness, much less of rebellion, that a man can be guilty of, while he keeps within the excellent *Rules, and limitations*, wherewith his words are cautioned. I could tell you further, that so imaginary, or rather extravagant, and ridiculous is this pretended *Treason* that there is not a person in Scotland, either of these who have refused, or who by the Act are not called to take

the *Test*, that may not upon the same ground and words be impeach'd, viz. *That they are not bound* (and so without doubt both may and do say it) by the *Test*, in their station, &c. to wish and endeavour any alteration, &c. Nay I desire the Advocate to produce the man, among those that have taken the *Test*, that will affirm, that by taking it he hath bound up himself never to wish or endeavour any alteration, &c. according to the Earl's Qualifications, and I shall name hundreds (to whom his Highness, as you have heard, may be added) that will say they are not bound up.

So that by this conclusion, if it were yeelded, all Scotland are equally guilty of *treason*, the Advocate himself, to say nothing of His Royal Highness, not excepted: Or if he still think he is, I wish he would testify under his hand to the World, that, by his Oath he is bound up never to wish, nor endeavour any alteration he thinks to the advantage of Church or State. in a lawful way, nor in his station, though neither repugnant to the Protestant Religion, nor his Loyalty. And if this he do, he does as a man, if not of sense, at least of honour; but if not, I leave a blank for his Epithets.

But that you may see that this whole affair is a deep *Mystery*, Pray, notice what is objected against the last part of the Explanation: *This I understand as a part of my Oath. Which*, sayes the Advocate, *Is a treasonable invasion upon the Royal Legislative power, as if the Earl could make to himself an Act of Parliament, since he who can make any part of an Act may make the whole.* And then, say I, farewell all Takers of the *Test* with an Explanation, whether the Orthodox clergy, or Earl Queensberry (tho' himself Justice generall) who were allowed by the Council so to do: seeing that whether they hold their Explanation for a part of their Oath or not yet others may, and in effect all men of sense doe understand it so: and thus, in the Advocate's Opinion, they have treasonably invaded the Legislative power, and made an Act of Parliament to themselves: Neither, in that case, can the Councils allowance excuse them, seeing not only the Earl had it, as well as they, but even the Council it self cannot make an Act of Parliament, either for themselves, or others. But Sir, I protest, I am both ashamed, and wearied of this trifling; And therefore to shut up this Head, I shall only give a few remarks. First, you may see, by the Acts of Parliament upon which the Advocate sounds his indictment, that as to *Leasing-making* and *depraving Laws*, all of them run in these plain, and sensible terms; *The inventing of narrations, the making, and telling of lyes, the uttering of wicked, and untrue calumnies, to the slander of King, and Government, the depraving of his Laws, and misconstruing his proceedings, to the engendering of discord, moving and raising of hatred, and dislike betwixt the King and his People.* And, as to *treason*, in these yet more positive terms; *That none impugne the dignity and authority of the three Estats, or seek, or procure the innovation, or diminution thereof.* Which are things so palpable, and easily discerned, and withall so infinitely remote both from the Earl's words and intentions, or any tolerable construction can be put on either, that I confess, I never read this indictment but I was made to wonder that its forger and maker was not in looking on it deterred by the just apprehensions he might have not only to be sometime accused as a manifest depraver of all Law but to be for ever accounted a gross, and most

most disingenuous *perverter of common sense*. The Earl's words are sober, respectful, and dutifully spoken, for the exoneration of his own Conscience, without the least insinuation of either *reflection or slander*. much less the *impugning of the Authority of Parliament*, as the Earl may appeal not only to his *Majesties true and Royal sense*, but to the most scrupulous, and nyce affecters of the exactest discerning, besides that they were first formally rendered in *Council*, for their approbation, and by them directly allowed; How then can any man think, that they could be charged with the greatest and vilest of crimes, *Leasing-making, depraving, perjury, and treason?* But the Advocate tells us, *That there are some things which the law commonly forbids in general, and that some inferences are as natural, and strong, and reproach as soon or sooner then the plainest defamations.* But what of all this? Must therefore such generalls be left to the phantastik application of every wild imagination, to the confounding of the use of speech, and subverting of of humane Society, and not rather be still submitted to the judgement of common sense, for their true and right understanding, and the deducing thence these strong and natural inferences talk't of? Of which good sense if the Advocate do but allow a grain weight, it is evident that the inferences he here libells against the Earl must infallibly be cast, and by all rational unbyassed men be found strange, unnaturall, and monstrous.

For St^{ly}, pray, observe these rational, and sound *Maxims* he founds his inferences on, and they are manifestly these. First, *That he who sayes he will onely obey as far as he can invents a new way whereby no man is at all bound to obey.* 2^{ly}, *That he who in the midst of hundreds of exceptions, and contradictions objected against an Oath, enjoyned by Act of Parliament, and still unanswered, sayes, that he is confident the Parliament never intended to impose contradictory Oaths, reproaches the Parliament.* 3^{ly}, *That he that sayes he must explain an ambiguous Oath for himself, before he take it, renders all Laws, and Oaths useles and makes himself the Legislator.* 4^{ly}, *That he that sayes that he takes this Oath, as far as it is consistent with it self, and the Protestant Religion, swears nothing.* 5^{ly}, *That he that declares himself not tyed up by the Test from endeavouring, in a lawful way, such alterations as he thinks to the advantage of Church, and State, consistent with Religion, and Loyalty, declares himself, and all others, loosed from the Government, and all duty to it, and free to make any, and all alterations that he pleases.* And 6^{ly} *That he that takes the Test with an explanation, and holds it to be a part of his Oath, invades the Legislative power, and makes Acts of Parliament.*

Upon which rare, and excellent *propositions*, I dar say, *The Earl* is content, according to the best judgment, that you, and all unbyassed men, can make either of their truth, or of my ingenuity in excerpting them, to be adjudged guilty or not guilty, without the least fear, or apprehension of the issue.

And in the third and last place, I shall only intreat you to try how the *Advocat's* reasoning will proceed in other cases, and what brave work may be wrought by so usefull a tool. Suppose then a man refuse the *Test* simply, or falls into any other kind of non-conformity, either civil, or Eccle-

fiastik, or pay's not the Kings custom, or other dues, or lastly understands an *Act* otherwise then the *Advocate* thinks he should, is not his *Indictment* already formed, and his *process* as good as made? viz. That he regards not the Law, that he thinks it is unjustly, or foolishly enacted, that he will only obey as far as he can, and as he pleases; and thereby renders all Laws useles, and so reproaches the King and Parliament, and impugns their Authority, and assumes to himself the Legislative power, and therefore is guilty of Leasing-making, depraving his Majesties Laws, and of treason; of which crimes above mentioned or one or other of them, he is actor art and part: Which being found by an Assize, he ought to be punished, with the pains of death, for faulture and escheat of lands and goods, to the terror of others to doe or commit the like hereafter. And, if there be found a convenient Judge, the poor man is undoubtedly lost.

But, Sir, having drawn this parallel, rather to retrieve the Earl's case, then to make it a precedent, which, I hope, it shall never be, and choosing rather to leave the *Advocate* then follow him in his follies, I forbear to urge it further.

These things considered, must it not appear strange, beyond expression, how the *Earl's Explanation*, such as it is, did fall under such enormous and grievous misconstructions: For, setting aside the Councils allowance, and approbation, (which comes to be considered under the next head) suppose the *Earl*, or any other person, called before the Council, and there required to take the *Test*, had, in all due humility, said, either that he could not at all take it, or, at least not without an Explanation; because the *Test* did contain such things as, not only he, but many other, and those the best of the *Loyal and Orthodox* Clergy, did apprehend to be contradictions, and inconsistencies: And thereupon had proponed one or two such as the *Papers* above set down do plainly enough hold out, and the *Bishop* in his *Explanation* rather evades then answers; would it not be hard, beyond all the measures of equity, and charity, to look upon this as a *designed reflection*, far more a malicious and wicked slander and the blackest treason? We see the *Act of Parliament* doth not absolutely injoin the taking of the *Test*, but only proposeth it to such as are intrusted in the Government, with the ordinary certification, either of losing, or holding their *Trusts*, at their option. We know also, that, in cases of this nature, it is far more suitable both to our christian liberty, and the respect we owe to a christian Magistrat, to give a reason of our conscientious non-compliance, with meekness, and fear, then, by a *mute compliance*, to fall under the censure of a stubborn obstinacy. And lastly, it is certain, and may safely be affirmed, without the least reproach, that *Parliaments* are not infallible, as witnesses the frequent changes, and abrogations of their own *Acts*, and their altering of *Oaths* imposed by themselves, and even of this *Oath*, after it was presented, which the *Earl* was not for altering, so much as it was done, as I told you before: How then can it be that the *Earl* appearing before a christian Council, and there declaring in terms, at the worst a litle obscure, because too tender, & modest, his Scruples at an *Oath* presented to him, either to be freely taken, or refused, should fall under any censure? If the *Earl* had, in this occasion, said, he could not take the *Test*, unless liberty were given him first to explain himself, as to some contradictions, & inconsistencies, which he conceived to be in it, though he had
said

said far more then is contained in his contraverted *Explanation*, yet he had said nothing but what Christian liberty hath often freely allowed, and christian charity would readily construe for an honest expression of a commendable tenderness, without any imputation of reproach against either King or Parliament. How much more then is his part clear and innocent, when, albeit so many thought the contradictions to be undeniable, yet such was his well tempered respect, both to God, and man, to his own conscience, and his Majesties Authority, that before, and not after, the taking of this *Oath*, to clear himself (in the midst of the many *exceptions*, and *scruples* raised) of all ambiguities in swearing, he first applies himself, for a satisfying *Explanation*, to the *Parliament*, the *prime imposers*, their true intentions and genuine meaning, and then gathering it, very rationally, from the *Oaths* consistency with it self, and with the Protestant Religion, the Parliaments aim and scope, and so asserting the King and Parliaments truth, and honour, he places the relieve, and quiet of his own Conscience in his taking the *Test* with this *Explanation*, and in declaring its congruity with his *Oath*, and duty of Allegiance.

The third Head of the Earl's *additional defences* is the further clearing, and improving of his grounds of *Exculpation*, above adduced, and repelled: Which were, *first*, that, before the Earl did offer his *Explanation* to the *Council*, a great many *Papers* were spread abroad, by some of the Orthodox Clergy, charging the *Test* with contradictions & inconsistencies. 2ly. That there was a *paper* penned by a reverend Bishop, and presented and read in *Council*, and by them allowed to be printed, which did contain the same, and far more important things then any can be found in the Earl's *Explanation*: And consequently, far more obnoxious to all His Majesties Advocats accusations. 3ly. That the *Explanation* upon which he was indicted was publicly by himself declared in *Council*, and by the *Council* allowed, so that the *Oath* was administrat to him, and he received to sit in *Council* and vote, by His Highness, and the rest of the Members, with and under this express qualification.

But, to all urged for the Earl's *Exculpation* the *Advocate* makes one short answer, *viz.* That if the Earl's paper did infer the crimes charged on it, a thousand the like offences cannot excuse it: And his Majesty is free to pursue the offenders, when, and in what Order, he thinks fit: which answer doth indeed leave the *Council*, and all concerned, in his Majesties mercy: But that it doth no way satisfy the Earl's plea is manifest: For, the first ground of *Exculpation*, *viz.* that before the Earl did offer his *Explanation* a great many *papers*, writ by the Orthodox Clergy, and others, were abroad, charging the *Test* with Contradictions, &c. was not alledged by the Earl merely to justify his *Explanation* by the multitude of the like *papers*, and so to provide for an escape in the croud: But, the Earl having most rationally pleaded, that his *Explanation* was given in by him, after these many *Scruples* and *Objections* raised by others were abroad, it was a good *Plea*, from a most pregnant circumstance, clearing, both the design, and sense of his words, from the foul aspersions of *reproaching*, and *depraving*, thrown upon them: Seeing the words spoken by him under the motive of such a circumstance, by all fair rules of interpretation, instead of being judged *misconstruing* and *depraving*, could only be understood as a *seasonable asserting* of the integrity of the Parliaments intentions, and the uprightness of the Earl's Conscience:

Which

which argument being in reason unanswerable, it necessarily follows that the *Advocate's* return to the *first ground* was neither sufficient nor pertinent, and that therefore the *Exculpation* was unjustly repelled. But next, the second ground of *Exculpation* is so far from being answered by the *Advocate* that it does not appear it was so much as understood; For, the *Earl's* argument being, That words allowed & approved by the *Council* can never fall under the accusation, either of *Leasing-making*, or *slandering* his Majesty's proceedings, or *depraving* Laws, and Acts of Parliament, as is evident in it self, and granted by the *Advocate*, where he say's that an *Explanation*, though reflecting on the King, and Government (which the *Earl's* was not) yet, if allowed by the *Council*, is to be sustained. But so it is that the *Council* hath allowed the words contained in this *Explanation* contraverted, both in themselves, and also in their equivalent, and far more important expressions: As for instance, not only by accepting the *Earl's Explanation* (as shall be cleared in the next place) but by giving warrant for the publication of the Bishop of Edinburgh his *Vindication*, wherein, First, for obviating the contradictions objected from the *Confession of Faith*, he positively asserts, that by the *Test* men do not swear to own every Article of that *Confession*; and yet the *Test* binds expressly to believe that *Confession* to be founded on and agreeable to the Word of God, and never to consent to any alteration contrary thereto, or inconsistent therewith: So that he gives both the *Test* and the *Parliament* the Lye. And then, for removing another Scruple, he tells us, that *By the Test* men are not bound up from regular endeavours to rectify or better the established government, both of Church, and State, which is clearly the same thing, (but not so well cautioned) with that which in the *Earl's* case is made a ground of *treason*: From which it unquestionably follows, that the *Earl's* words, having been allowed, and approved by the *Council*, could never, in Law, or reason, be thereafter made a ground of accusation, by any, much less by themselves. Now I desire to know where the *Advocate*, in all his *Plea*, doth so much as notice, far less answer, this defence, or what his telling us, *A thousand offences of the like nature doth not excuse one*, either doth, or can signify? seeing this argument for the *Earl*, instead of pleading excuses, doth justify the matter, and for ever purge all shadow of offence or ground of quarrel, which will be yet more apparent, when you shall adde to this the *third ground* of the *Earl's exculpation*, viz. That the *explanation*, whereupon the *Earl* was indicted, was publikly by himself declared in *Council*, and by the *Council* allowed and accepted: In so much as, after he had given his *Explanation* as the sense wherein he was free to swear the *Test*, the Oath was thereupon administrat to him, and he received to sit, and vote as a *Councillour*. Whereby it is evident, That, by this allowance, and acceptance, the *Earl's Explanation* became the *Council's*; as much as if, after the *Earl's* pronouncing the words, they had *verbatim* repeated them, and told him, they were satisfied he should swear the *Test* in these terms: And whether this ought not to be a sufficient exoneration to the *Earl*, let all men judge. The *Advocate* makes a noise, That in the case of an Oath required the taker ought to swear it in the sense of the imposer, (which none doubts) and then runs out, That The *Earl* in place of taking it in the imposer's sense, did unwarrantably intend a sense of his own, to the eluding and frustrating of the obligation of this, and all other Oaths. But all this

is nothing to the purpose, for waving that in the *Earl's* case it is most impertinent to talk of his obtruding of a *sense*, to the eluding, and frustrating of the obligation of his *Oath*, seeing his *Oath* was not then given, or at all in being, it is expressly alledged by the *Earl*, and not our that the *Explanation* tendered by him, when called to take the *Test*, was accepted by the *Council*, and the *Oath* thereupon administered, and so the *Earl* freely joyns issue with the *Advocate*, and acknowledging that the taker of the *Oath* ought to swear in the sense of the imposer, subsumes *interminis*, that he himself did swear so, and not otherwise, in as much as he did swear in a sense accepted by the *Council*, before he gave his *Oath*, as is evident. 1. By their commanding him to sit after he had sworn, and 2. In that neither the *Advocate*, nor any other, had ever the confidence to quarrel his sitting, as a breach of the Law, which no doubt they had done, if not convinced that by taking the *Oath* he had satisfied the Act of Parliament; which things, in true dealing and the construction of all honest men, are the same as if the *Oath* had been required of him by the *Council*, in the very sense and words of this *Explanation*. Neither is it material whether the *Explanation* offered by the *Earl* doth deserve (as certainly it doth not) these many ill names, which the *Advocate* would fix upon it, because though it had been much worse then it is, yet being offered to the *Council*, and submitted to their judgment, and they having accepted it, the thing became *quasi res judicata*, and cannot be retracted, without subverting the surest Rules, both of truth, and government. The *Advocate* indeed tels us, 1. That the *Council* heard not the *Earl's* *Explanation*: But I have already told you they did hear it, and the *Earl* is still ready to prove it: And suppose some say they did not hear it distinctly, (As what thing spoke in Council is distinctly heard and considered by all?) Yet it being certain that they did all approve it it is sufficient to the *Earl*: And it is only their concern, whether in approving what they did not hear they observed their *Oath De fidei*, &c. or not. His Highness, who the *Earl* was most concerned should hear, did certainly hear, as himself afterwards acknowledged. 2. The *Advocate* sayes, That the bearing and allowing the *Earl* to sit is no relevant plea; yea further though all the *Council* had allowed him that day, yet any of his Majesties Officers might have quarrelled him the next day. But first, I would gladly know, upon what head? For if upon obtruding a sense of his own, it is undeniable that whatever the sense was the obtruding of it was purged by the Councils acceptation, and it became theirs, and was no more his. But if the *Advocate* doth think, that even the matter of the *Explanation*, though allowed and accepted, may still be quarrelled: Then. 1. I hope, he will consider in what terms he doth it, for if he charge it after it becomes the Councils (as in truth he hath done already) with the same liberty wherewith he treats it as the *Earl's*, he runs fair to make himself the *Arrantest defamer and slanderer* of the *King* and *Council*, that ever yet attempted it. But 2ly, It merits a worse name then I am free to give it to say, That an *Explanation* allowed by the *Council*, in the administering of an *Oath* proper to be administered by them, doth not secure the taker as to that sense, both in Law and Conscience: Seeing in effect this quite takes away the best grounds of assurance among men, and turns their greatest security to their greatest snare. And 3ly, If this be sound Doctrine, it is worth the enquiring, what security the *Clergy*, to whom the *Council*, as

you

you have hear'd, did indulge an *explanation*, have thereby obtained : For as to such *Laiks* as did only at their own hand take hold of, and snatch at this indulgence, not provided for them by the *Councils Act*, it is clear their *doom is dight*. It is not here debated how far that *Explanation* of the *Councils* may satisfy, and quiet *Conscience*, let such concerned see to it. Some please themselves with a general notion, That if the sense given by the Administrator be sound then it is also safe, whether it be agreeable to the plain, and genuine meaning of the Oath or not, nay whether it be agreeable to the sense of the first Imposers or not : But others, who consider, more tenderly, what it is to swear *in Truth, and in Judgment*, think it rather a prophanation, and a sinful preferring of the credit of *men* to the glory of the *Almighty*, to offer to smoothe an Oath by a disagreeable interpretation, when in effect the Oath it self ought to be changed : But the thing in question is *about the security of life and fortune*, for seeing the *Councils Explanation* is, at least, to say no worse, lyable enough to the calumnies of an inventive malice, and the *Advocate* telleth us, *Though all the Council had allowed a man to swear with an explanation, yet any of His Majesties Officers may, the next day, quarrel him*, It is evident that this allowance can afford him no security. It is true the *Advocate* may alledge, and possibly find a difference betwixt the *Councils emitting* and their *accepting* of an *Explanation* But as in truth there is none, more then betwixt a *Mandat* and a *Ratification*, so I am confident, if ever the thing come to be questioned, this pretence will evanish and come to nothing.

It is likewise to be remembred, that when the Earl, the next day after he took the *Test*, was questioned for the *Explanation* he had made, and required to exhibit a *copie* (which was afterwards made the ground of his indictment) so soon as he observed that some began to carp, he refused to sign it, demanded it back, and would have destroyed it, as you have heard, which were all clear *Acts* of disowning and retracting, for eviting offence, and of themselves sufficient to have prevented any further enquiry, there being nothing more just and humain then that words, though at the first hearing offensive, yet if instantly retracted when questioned, should be past : But this, as well as other things, must in the *Earl's case* be singular, and whether he plead the *Councils allowing* or his own *disowning* (as in effect he doth both) it is equally to no purpose, the thing determined must be accomplished. You heard before, how that a *reverend Bishop*, and many of the Orthodox Clergy did take a far greater liberty of *Explanation* then the Earl pretended to : you see also that first the *Council* allows his words, whereupon he rests : And when he finds that they begin to challenge he is willing to disown : And withall it is undeniable, and acknowledged by the *Council* themselves, that the *Test*, as it stands in the *Act* of Parliament, is ambiguous, and needs to be explained : And the Earl may confidently averr, that of all the *Explanations* that have been offered (even the *Councils* not excepted) his is the most safe, sound, and least disagreeable to the Parliaments true sense and meaning. And yet, when all others escape, he alone must be seased, and for a thing so openly innocent, clearly justifiable, and undeniably allowed, found guilty of the worst of crimes, even *Leasing-making*, *Leasing-telling*, *Depraving of Laws*, and *Treason* ; but all these things God almighty sees, and to him the judgment yet belongs.

And

And thus I leave this discourse shutting it up with the case of *Archbishop Cranmer*, plainly parallel to the *Earl's*, to show how much he was more favourably dealt with by the King, and Government, in those dayes, then the *Earl* now is, though he live under a much more merciful; and just *Prince* then that worthy *Prelate* did, for *Cranmer* being called and promoted by *Henry VIII. of England* to be *Archbishop of Canterbury*, and finding an *Oath* was to be offered to him, which, in his apprehension, would bind him up from what he accounted his duty, he altogether declined the dignity and preferment, unless he were allowed to take the *Oath* with such an *Explanation* as he himself proposed, for salving of his Conscience; and though this *Oath* was no other then the statut, and solemne *Oath*, that all his Predecessors in that *See*, and all the mitered Clergy in England had sworn, yet he was admitted to take it, as you see in *Fuller's Church hist: Of Britain Lib: 5 p. 185 and 186*, with this formal Protestation.

In nomine Domini. Amen. Coram vobis &c. Non est, aut erit mea voluntatis, aut intentionis, per huiusmodi iuramentum vel iuramenta, qualitercunque verba in ipsis posita sonare videbuntur, me obligare ad aliquid, ratione eorundem, post hac dicendum, faciendum, aut attendendum, quod erit, aut esse videbitur, contra Legem Dei, vel contra illustrissimum Regem nostrum Angliæ, Legesve, aut Prærogativas Ejusdem: Et quod non intendo per huiusmodi iuramentum, vel iuramenta, quovis modo me obligare, quo minus libere loqui, consulere, aut consentire valeam; in omnibus, & singulis Reformationem Religionis Christianæ, Gubernationem Ecclesiæ Anglicanæ, & Prærogativam Coronæ ejusdem Reipublicæ, vel commoditatem earundem, quoquo modo concernentibus; & ea ubique exequi, & reformare, quæ mihi in Ecclesiâ Anglicana reformanda videbuntur: Et secundum hanc interpretationem, & intellectum hunc, & non aliter, neque alio modo, dictum iuramentum præstisurum protestor, & profiteor.

That is to say. In the Name of God. Amen. Before you &c. It neither is, nor shall be, my will or meaning, by this kind of Oath, or Oaths, and however the words of themselves shall seem to sound or signify, to bind up myself, by vertue hereof to say, do, or endeavour any thing, which shall really be, or appear to be, against the Law of God, or against our most illustrious King of England, or against his Laws and Prærogatives: And that I mean not, by this my Oath, or Oaths, any wayes to bind up myself from speaking, consulting, and consenting freely, in all, and every thing in any sort concerning the Reformation of the Christian Religion, the Government of the Church of England, and the Prærogative of the Crown of the Commonwealth thereof, or their advantages and from executing, and reforming such things as I shall think need to be reformed in the Church of England: And according to this Explanation, and sense, and not otherwise nor in any other manner, do I protest, and profess, that I am to take, and perform this Oath.

Nor did that excellent Person, says *Mr Fuller*, smother this privately in a corner, but publikly interposed it, three severall times, once in the *Charter-house*, before authentik witnesses, again upon his bended knees, befor the high Alter, in view and hearing of many people, and Bishops beholding him, when he was consecrated, and the third time, when he received the *Pall*, in the same place.

Now would it not be very strange if the like liberty should not be allowed to the *Earl*, under *His Majesty*, in reference to the *Test*, which *Henry the VIII.* a Prince that stood as much on his Prærogative as ever any, did vouchsafe to this *Thomas Cranmer*, who, as another Historian observes

acted fairly, and above-board: But there wanted then the high and excellent designs of the *great Ministers*, The rare fidelity of *Councillors*, sound Religion and tender piety of *Bishops*, solid Law and Learning of *Advocates*, incorruptible integrity of *Judges*, and upright honesty of *Affizers*, that now we have, to get Archbishop *Cranmer* accused, and condemned, for *Leasing-making, depraving Laws, Perjury, and Treason*, to which accusation his Explanation was certainly no less obnoxious then the Earl's.

But I hasten to the fourth, and last head of the *Earl's additional defences*, viz The removing certain groundless pretences, alledged by the Advocate, for aggravating the Earl's offence: *As 1. That the Earl, being a Peer, and Member of Parliament, should have known the sense of the Parliament, and that neither the Scruples of the Clergy, nor the Councils proclamation, designed for meer Ignorants, could any way excuse the Earl for offering such an Explanation.* But, first, the Advocate might have remembred, that in another passage he taxes the Earl as having debated in Parliament against the *Test*, whereby it is easy to gather, that the Earl having been in the matter of the *Test* a dissenter, this quality doth rather justify then aggravat the Earl's Scrupling. 2ly. If the proclamation was designed for the *meer Ignorants* of the Clergy, as the Advocate calls them, who knew nothing of what had past in Parliament, an Explanation was far more necessary for the Earl, who knows so little of what the Advocate alledges to have past in Parliament, viz. *That the Confession of Faith was not to be sworn to as a part of the Test*, that of necessity (as I think) he must know the contrary; In as much as, first, this is obvious from the expresse tenor of the *Test*, which binds to own, and profess the true Protestant Religion, contained in the Confession of Faith, and to believe the same to be agreable to the Word of God; as also to adhere thereto, and never to consent to any change contrary to, or inconsistent with the said Protestant Religion, & Confession of Faith: Which to common sense appears as plain, and evident, as can be contrived, or desired. But 2ly, It is very well known, that it was expressly endeavoured, and carried in Parliament, that the Confession of Faith should be a part of the *Test* and Oath: For the Confession of Faith being designed to be sworn to, by an Act, for securing the Protestant Religion (which you have heard was prepared in the Articles, but afterwards thrown out) when this Act for the *Test* was brought into the Parliament, some dayes after, by the Bishop of Edinburgh, and others, the Confession was designedly left out of it: But it being again debated, that the bare naming of the Protestant Religion, without condescending on a Standard for it, was not sufficient, the Confession of Faith was of new added: And, after the affirmative clause for owning it, and adhering to it was insert, upon a new motion, the negative, never to consent to any alteration, contrary to, or inconsistent with the said Protestant Religion, and Confession of Faith was also subjoyned: But not without a new debate and opposition made against the words, *And Confession of Faith*, by the Bishop of Edinburgh, until at length he also yeelded, All which, it is hoped, was done for some purpose: And if, at that time, any had doubted of the thing, he had certainly been judged most ridiculous: For it was by that addition concluded by all that the Confession was to be sworn, and further it appears plainly, by the Bishop of Edinburgh his vindication, that, when he

wrote

wrote it, he believed the *Confession* was to be sworn to, for he takes pains to justify it (though calumniously enough) alledging, *That it was hastily compiled, in the short space of four dayes, by some Barrons and Ministers, in the infancy of our Reformation.* (Where, by the by, you see that he makes no reckoning of what the Act of Parliament, to which the *Test* refers, expressly bears, viz. *That that second Ratification 1567. which we only have recorded, was no less then seven years after this Confession was first exhibited, and approved Anno 1560.* But moreover, he tells us, *That the Doctors of Aberdeen, who refused the Covenant, were yet unwilling not only to subscribe, but to swear this Confession of Faith.* Which again, to answer the Bishops critik of *four dayes*, was more then 70. years after it was universally received. It's true, that, when the Bishop finds himself straitned how to answer objections, he is forced to make use of the *new Gloss* (I shall not call it of *Orleans*) whereby the *Protestant Religion* is made to be sworn to only as far as every man pleases to interpret, & as far as may be consistent with any *new principles of state.* But the Parliament certainly (I do not speak ironically) did intend by this *Test* to swear & assert the *True Protestant Religion, and the said Confession of Faith*, whatever may be now pretended. The Earl could not also but very well remember what His Highness had said to himself, about the inserting of the *Confession*, and no doubt, the *Advocate*, if ingenuous, knows all this: For the thing was at that time mater of common talk, and indeed, till *Papers* objecting contradictions, and inconsistencies betwixt the *Confession* and the rest of the *Test* began to be so numerous (which was about the end of October) that there was no possibility left to answer them, but by alledging, *That in the Test men do not swear to every article and proposition of the Confession, but only to the Protestant Religion therein contained*, this point was never doubted. And whether this answer be true, and a solid *Vindication*, consonant to the words of the *Test*, or a circulating evasion enervating all its force, let others judge. But the *Advocate* says, *When it was moved in Parliament to read the Confession it was waved: Most true: & the reason given by the Bishops for it was that it was not our, they knew it. and it was already insert in the Acts of Parliament:* And, the truth was, the reading of it would have spent more time then was allowed on examining the whole *Test*. It was likewise late, after a long *Sederunt*, and it was resolved to have the *Act* passed that night, & so it went on. But it was likewise moved to read the *Covenant*, seeing it was to be disclaimed, and this was flatly refused. And will the *Advocate* thence infer, *That by the Test the Covenant is not abjured*, albeit it be most certain, that many in the *Parliament*, at that time, had never read the one or the other? But to follow the *Advocate's* excursions, and answer them more particularly: The motion for reading the *Confession* being made, on this very occasion, *because it was to be insert in the Test and sworn to*, concludes enough against him: For no body can be so effronted as to say, it was used in *Parliament* as an argument not to read it, because it was not to be sworn to, but (though it cost a debate) it was plainly agreed to be sworn to, and therefore insert. 2ly. Can any man doubt, *the Confession was to be sworn to*, when it is not our that severalls who were members of *Parliament*, and, by reason of offices they enjoyed, were called to swear the *Test*, pretending, with reason, tenderness of an Oath, did, before swearing, make a fashion at least of reading and studying the *Confession*, to satisfy themselves how far they might swear it. And that this was done by an

hundred, I can attest themselves. Lastly it is certain that, when, in the end of October, the *Bishop of Edinburgh* did quarrel *S^r George Lockhart* for causing the *Confession* to be insert in the *Test*, & he answered that without it a *Turk* might sign the *Test* it was not then pretended by the *Bishop* that the *Confession* was not to be sworn to, and therefore he at that time had no reply

But this is a debate, I confess, not altogether necessary for my present task, only thereby you may see ground enough for the *Earl* to believe the *Confession* was sworn to: And all that did swear, before the *Councils Explanation*, having sworn in that sense, and, for ought I know, all (except the Clergy) being by the *Councils Act* still bound to do so, It was not strange the *Earl* might be of this Opinion. And seeing that many of the *Contradictions* were alledged to arise hence, and the *Earl* being a *dis-senter*, it was yet less strange that the *Earl* did scruple; nor is it unreasonable that his modest *Explanation* should have a most benign acceptance.

The second pretence of aggravation is, That his Majesty did not only bestow on the *Earl* his Lands, and Jurisdictions fallen into his Majesties hands by the forfeiture of his Father, but also pardon him the crimes of *Leasing-making* and *Misconstruing*, whereof he was found guilty by the *Parliament 1662*. And raised him to the title and dignity of an *Earl*, and to be a member of all his Majesties *Judicatories*. All which the *Earl*, as he hath ever, doth still most thankfully acknowledge. But seeing the *Advocate* hath no warrant to upbraid him with his Majesties favours, and that these things are now remembered with a manifest design to raise dust, and blind strangers, and to add a very ill thing, *Ingratitude*, to the heap of groundless calumnies cast upon him, I must crave leave to answer a little more particularly, and refute this new tout (as the Scots proverb is) in an old horn. This old *Leasing-making* is then now brought in seriously after it hath been treated in ridicule for 18 years, by the very *Actors* who did never pretend to defend it in cold blood: And, were it not to digress too much, I could name the persons, and make them (if capable) think shame of their falshood, and prevarications in that point, and of their abusing His Majesty, and prostrating Justice. but I forbear.

The *Advocate*, in his book of pleadings, makes this a *Stretch*, and says, His Majesty rescinded it. And His Majesty himself hath, several times, expressed his sense of the stretches made by some against the *Earl*, at that time. It is well known the *Family of Argyle* is both ancient and honourable, and hath been Loyal and serviceable to the Crown for several hundreds of years: but they must now be destroyed, for having done, and being able, as they say, to do too much, which others neither can nor will do.

Neither is the *Advocate* ignorant that the only failing that *Family* hath been charged with, in all that long tract of time, was a compliance of the late *Marquis of Argyle* the *Earl's* Father, in the time of the late *Usurpation*, by sitting in the then *Parliament of England*, some years after all the standing forces of the Kingdom were broken, His Majesty beyond sea, the whole Countrey overrun, the *Usurpers* universally acknowledged, and neither probability of resistance, nor possibility of shelter left to any that were most willing to serve His Majesty, as the *Advocate* himself hath published in his printed pleadings, in which he likewise lays out the special and extraordinary Circumstances whereby the *Marquis* was

was necessitate to do what he did. And the compliance charged on him was so epidemik that all others were pardoned for the same, except he alone, though none had such favourable Arguments to plead, and though he pleaded the same *indemnity* that saved others. And seeing he submitted, and delivered up himself, and lost his life, and seeing, at the same time of the *compliance* that he suffered for, the Earl his son was actually serving and suffering for his *Majesty*, as you find in the former part of this Letter, the *Earl's restitution* was no less then He and his Family might well expect of his *Majesties Goodness and Justice*. It is true the *Earl* was again accused and condemned (which may appear indeed strange to such as know not all particulars) upon the same Old Acts of *Leasing-making*, and with as little ground (if possible) as now, and was pardoned by his *Majestie*, for which he hath often, and doth alwayes acknowledge that he owes to his Majesty both his Life and Fortune: But upon this occasion, and being baited as he is, he hopes his *Majesty* will not take it ill that he say, That his *Majesties* mercy was in this case determined by Justice: And for proof that his *Majesty* did then know him to be innocent, did not his *Majesty* then say, *It was impossible to take a mans life upon so small an account?* Tho nevertheless it had been done, if his Majesty had not interposed and pardoned him. Did not the Chancellour Clarendoun (who was *Patron* to the most considerable of the *Earl's* pursuers) hearing of his condemnation, *Blesse God, he lived not in a Countrey where there were such Laws?* (He should have said such Judges) And I believe many more will say the same now. Did it not plainly appear, at that time, that his principal *pursuers* were very *bitter, malicious, and unjust* to him? For the *Earl* had not only served his Majesty in that troublesome and hazardous appearance in the *Hills*, but he had been particularly useful to *Earl Middleton* then his *Majesties* Lieutenant General, and had stood by him, when these deserted him, whom not withstanding he took afterwards by the hand, when he was his *Majesties* Commissioner in the Year 1661, & then designed new Interests and new alliances, whereof some did hold and some never held. And then indeed it was that he and others thought it proper for them to destroy the Family of *Argyle*, to make their own Fortunes; But it pleased God and his *Majesty* to dispose otherwise: Then it was that the *Earl* was so hotly pursued for his life, having at that time no Fortune, all being in his *Majesties* hands: Then was the accusation of *Treason* likewise urged by the same persons, and must have carried, but it was not found necessary, *Leasing-making* being sufficient to take his life, and, as it falls out when any game is started and the hounds in chase, all the little *currs* run alongs, So the *Earl* wanted not then many *pursuers* that are now scarce to be heard of. And further, some of the parties themselves confessed the particulars to the *Earl* afterwards, vvhó yet novv return to Act their former parts, and that they had then laid down a resolution to intrap him, *per fas, aut nefas*, but notwithstanding all this ill humour and violence, all the ground they could get for a quarrell, in two Years time, vvas one single letter, among many they intercepted, the occasion and import vvhich vvas as follows. About a twelve-month after the death of the late *Marqueis of Argyle*, The *Earl* his son being, by the loss of his estate, and burden of his debts, brought into straits, a friend from *Edenburgh* wrote to him, then at London, to do what he could for himself at Court, and the sooner the better; For he needed neither expect favour nor Justice from some in Scotland

land, and, if matters were delayed, his Fathers whole estate would be begg'd away in parcels. His Friend likewise complained, that the *Earl* did not write to inform his friends in Scotland; and on this he insisted severall post - dayes, which, at last, drew an answer from the *Earl*, that he had been to wait upon his *Majesty*, and had found him both just and kind to him, and doubted not the effects of his Royal favour, that he was sensible of his loss by delay, yet must proceed discreetly, and not press to give His *Majesty* trouble, but must take His Majesties method, and wait his time; That he judged, much of what his Friend told him was true, but he must have patience: It was his misfortune that some took pains to make His *Majesty* believe, that the Parliament was his Enemy, and the Parliament to believe, the King was his Enemy, and by such informations he was like to be a sufferer, but he hoped in God all should be well. *This blast must blow out, and will blow over.* The King *will see their tricks*: And upon this letter, specially those last words, the *Earl* was accused of *Leasing-making* betwixt King and Parliament, and that he expected changes, and so had a great deal of the same stuff laid to his charge, as now you have heard: And if the *now Register* will produce the *Earl's* principal Letter, and the Paper the *Earl* gave in to the Parliament, these two would clear all, the case then, and now, as you may see, *Mutatis Mutandis*, being much the same, and some of the same tooles used. But to go on, The *Earl's* words in that Letter being clear, and plain viz. *That he complained of others that reported lies to King and Parliament but did himself report none to either*, He acknowledged the Letter, which could never have been proven to be his, and as soon as he heard that it was intercepted did render himself to his *Majesty* before he was called for. But, which very much troubled him, had not access: Yet his *Majesty* was so gracious that in stead of sending him prisoner to Scotland with a guard (as was much pressed) he allowed him to go down on a verbal bale: And his *Majesty* was pleased to say, *That he saw nothing in the Earl's Letter against his Majesty or the Parliament, but believed the Earl did design to reflect on the Earl of Midletoun.* The *Earl* came to Edinburgh, a fourth night before the day appointed by his *Majesty*, and thought to have had the liberty of the city, till that day should come, but was sent to the Castle, the next day after his arrival: Upon which he advertised his *Majesty* of his condition, who would hardly believe they would take his life, till it was told plainly it was designed, and if he died it lay at his *Majesties* door, upon which his *Majesty* was graciously pleased to send immediately an order to the *Earl of Midletoun* not to proceed to Execution against him: Yet the Sentence of death was pronounced, and the day of Execution remitted by the Parliament to the *Earl of Midletoun*: Which he accepted of, albeit he had no particular instruction for it from his *Majesty*, which, before a year went about, *Earl Midletoun* found could not be justified by him, and some of the *Earl's* chief accusers were declared by his *Majesty* to be themselves *Leasing-makers*; And then the *Earl*, by his *Majesties* favour, and goodness, was restored to a part of his Predecessors estate, and titles, which he took as thankfully as if a new estate, and new and greater honours had been conferred upon him. And though His *Majesty* was pleased, at the granting of these titles, to say *he could help them when he pleased*, yet his *Majesty* knows, that the *Earl* never troubled him about any such matter, nor solicited him now these eighteen years,

for

for any *Title, Office, or Employment* (though he confesses he had of all sorts) nor hath he been burthensome to his Majesties Exchequer (500^l yearly for 4 or 5 years that the Earl served in the *Treasury* being all that ever he touched of his *Majesties* money) albeit few attended more, and none so much that lived at his distance. He was also twice at London, to kiss his *Majesties* hands, but still on his own charges: Which things are not said to lessen his *Majesties* bounty, and goodness, whereof the *Earl* still retaines all just, tender, and dutifull impressions, but to answer the *Advocate*, and to teach others to hold their peace, that cannot say so much.

His life is known to have been true, honest, and of a *peece*, and all alongs he hath walked with that *straightness* that he can compare his *integrity* with all that now attacque him.

By all which it is apparent, that what the *Advocate* here pretends for an aggravation may well be accounted a *second part of the Earl's persecutions*, but cannot, in the least, impair either his innocence, or his honour.

Seeing therefore the ground of the Earl's present accusation, with all he either designed, said, or did, in this matter, was only that, when called, nay required to take the *Test*, and after leave first obtained from his *Highness* and *Council*, he did in their presence, before the giving of his *Oath*, declare, and propose to them the *sense* wherein he was willing to take it; That this his *sense* neither containes, nor insinuates, the least *slander*, *reproach*, or *reflection*, either upon the *King*, the *Parliament*, or any Person whatsoever, but, on the contrair, is in effect ten fold more agreeable to the words of the *Test*, and meaning of the *Parliament* that framed it, then the *Explanation* emitted by the *Council*; and was also most certainly, the first day, by them accepted; and, when the next day challenged, by him offered to be retracted, & refused to be signed: That the whole *Indictment*, & more especially that part of it about the *Treason*, is a meer *Rapsody* of the most irrational, absurd, and pernicious consequences, that ever the sun beheld, not only forcing the Common rules of speech, charity, and humanity, but ranversing all the *Topicks* of *Law*, *Reason*, and *Religion*, and threatening no less, in the *Earl's* person, then the ruine of every mans *fortune*, *life*, and *honour*; That the *Earl's* *Defences*, and grounds of *Exculpation*, were most pregnant, and unanswerable, and either in themselves notour, or offered to be instantly verified. And lastly, That the *aggravations* pretended against him do either directly make for him, or most evidently discover the restless *malice* of some of his *implacable* enemies: Shall our *Gracious King*, who not only clearly understands right, and hates oppression, but also, to all his other excellent qualities, hath by his *Gentleness*, and *Clemency*, even towards his enemies, added that great *Character* of *Goodness*, upon vain, and false insinuations, and unreasonable, and violent stretches, not only take away the *Life* of an innocent person, but of one who himself, and his family (be it said without disparagement) have, for a longer time, and more faithfully, and signally served His Majesty and the *Crown*, then any person, or family of his degree and quality, of all his *Persecuters* can pretend to? Shall his numerous family, hopeful children, his friends and creditors, all be destroyed? Shall both former *services* be forgot, *innocence* oppressed, and all rules of

justice, and *Laws* of society and humanity for his sake overturned: Shall not only *the Earl* be cut off, and his noble and ancient Family extinguished, but his *Blood and Memory* tainted with as black and horrible a stain as if he had conspired with *Jacques Clement Ravillack*, The gun-powder *Miscreants*, The bloody *Irish Rebels*, and all the other most wicked & hainous traitours of that gang. And all this for a *meer imaginary crime*, whereof it is most certain that no man living hath, or can have, the least *reall conviction*, and upon such frivolous allegations as all men see to be, at the top, *meer moon-shine*, and at the bottom, *villanie* unmixed.

After clearing these things, the Earl, it seems, intended to have addressed himself to his Majesties *Advocate*, in particular, and to have told him, that he had begun very timously in *Parliament* to fall first on his *heritable jurisdictions*, and then, upon his *Estate*, and that now he was fallen upon his *life and honour*, whereby it was easy to divine that more was intended, from the beginning, then the simple taking away of his Offices: seeing that some of them, on his refusing the *Test*, were taken away by the *certification of the Act of Parliament*, and that those that were *heritable* he offered, in *Parliament*, to present and surrender to his Majesty on his knee, if his Majesty, after hearing him, should think it fit; only he was not willing to have them torn from him, as hath been said; and if that were all were designed, as was at first given out, the *Advocate* needed not have set him on *high as Naboth*, and accuse him as a blasphemmer of God, and the King.

Then turning his speech to the *Lords of Justiciary* he thought to have desired that they would yet seriously consider his words, in their true sense and circumstances, his own *Explanation* of his *Explication*, and especially the forgoing *matter of fact*, to have been laid before them, with his *Defences*, and grounds of *Exculpation*; as also to have told them that they could not but observe how that he was singled out amongst thousands, (against whom much more than all he is charged with could be alledged) and that they must of necessity acknowledge (if they would speak out their own conscience) that what he had said was spoke in pure innocence, and duty, and only for the *exoneration* of himself, as a *Christian*, and one honoured to be of His Majesties *Privy Council* (where he was bound, by his Oath, to speak truth freely) And not to throw the smallest reproach on either person or thing. Adding that he was loath to say any thing that looks like a reflection upon His Majesties *Privy Council*: but if the *Council* can wrong one of their own number, he thought he might demand if he had not met with hard measure? For first he was pressed, and perswaded to come to the *Council*, then they receive his *Explanation*, and take his *Oath*, then they complain of him to His Majesty, where he had no access to be heard, and by their *Letter*, under their hands, affirm that they had been careful not to suffer any to take the *Test* with their own *Explanations*, albeit they had allowed a thing very like it, first to Earl *Queensberry*, then to the *Clergy*; And the *President* now *Chancellor* had permitted several members of the *Colledge of Justice* to premise, when they swore the *Test*, some *one sense*, some *another*, and some *non-sense*, as one saying he took it, *in sano sensu*, another making a speech that no man understood, a third, all the time of the reading, repeating, *Lord have mercy upon me miserable sinner*: Nay even an *Advocate*, after being debarred a few dayes, because albeit no *Clerk* yet he would not take it without the *benefit of his clergy*, viz. the *Councils Explanation*, was yet

yet, thereafter admitted without the *Warrant of the Councils Act*: but all this in the case of so many other was right and good. Further the *Council* expressly declare the Earl to be *Guilty*, before he had ever said one word in his own *defence*. Thereafter some of them become his *Affizers*, and others of them *witneß* against him; and after all, they do of new concern themselves, by a *second Letter* to His Majesty (*wherein they assert, That after full debate, and clear probation, he was found guilty of Treason &c.*) to have a sentence past against him, and that of so high a nature, and so dreadfull a consequence, as suffers no person to be unconcerned, far less their Lordships his Judges, who upon grounds equally just, and, which is more, already predetermined by themselves, may soon meet with the same measure, not only as *Concealers of Treason*; but upon the least pretended disobedience, or non-compliance with any *Act of Parliament*: and, after all, must infallibly render an account to God Almighty. He bids them therefore *Lay their hands to their hearts*, and whatever they shall judge, he is assured that God knows, and he hopes all unbiassed men in the world will or may know, he is neither *Guilty of Treason*, nor any of the *Crimes* libelled. He sayes he is glad how many out-do him in asserting the true *Protestant Religion*, and their Loyalty to His Majesty; Only, he addes, If he could justify himself to God as he can to His Majesty, he is sure, he might account himself the happiest man alive. But yet, seeing he hath a better hope in the mercy of God through *Jesus Christ*, he thereupon rests, whether he find *Justice* here on earth or not. He sayes, he will adde nothing to move them either to *tenderneß* or *pity*; he knows that not to be the place, and pretends to neither from them; He pleads his *Innocence*, and craves *Justice*, leaving it to their Lordships to consider not so much his particular case as what a *Preparative* it may be made, and what may be its *consequences*: And if all he hath said do neither convince, nor perswade them to alter their judgment, yet he desires them to consider, whether the case do not, at least, deserve to be more fully represented, and left to His Majesties wisdom and justice, seeing that if once the matter pass upon record for *Treason*, it is undoubted, that hundreds of the best, and who think themselves most innocent, may, by the same methods, fall under the like *Condemnation*, when ever the *Kings Advocate* shall be thereto prompted.

And thus you have a part of what the *Earl* intended to have said, before pronouncing *Sentence*, if he had not made his *Escape* before the day: Yet some things I perceive by his *Notes* are still in his own breast, as only proper to be said to His Majesty. I find several *Quotations* out of the *Advocates* printed books, that, it seemes, he was to make some use of, but, seeing it would have been too great an interruption to have applyed them to the places designed, I have subjoyned them together, leaving them to the *Advocate's* own, and all mens consideration.

It was by some remarked, That when the *Lords of Justiciary*, after the ending of the first dayes debate, resolved that same night to give Judgment upon it, they sent for the *Lord Nairn*, one of their number, an old and infirm man, who being also a *Lord of the Session*, is so decayed through age, that he hath not, for a considerable time, been allowed to take his turn, in the *Outer-house* (as they call it) where they judge lesser causes alone: But notwithstanding both his age, and infirmity, and that he was gone to bed, he was raised, and brought to the Court, to consider a

debate, a great deal whereof he had not heard, in full *Court*, and withall, as is informed, while the Clerk was reading some of it, fell of new a sleep.

It was also remarked that the Lords of Justiciary being, in all, five, *viz.* the Lord *Nairn* above-mentioned, with the Lords, *Collintoun*, *Newtoun*, *Hirkhouse*, and *Forret*, the Libell was found relevant only by the odds of three to two *viz.* the Lord *Nairn* foresaid, the Lord *Newtoun* since made President of the Session, and the Lord *Forret*, both well enough known, against the Lord *Collintoun*, a very ingenuous Gentleman, and a true old Cavalier, and the Lord *Hirkhouse* a learned and upright judge: As for the Lord Justice General, who was also present, and presided, his vote, according to the constitution of the Court, was not asked, yet he is since made a Marquies, and Lord high Treasurer.

But to return to *my Narrative*, the *Earl*, as I have already told you, did not think fit, for reasons that you shall hear, to stay till his *Majesties* return came to the *Councils* last Letter, but, taking his opportunity, made his escape out of the Castle of Edinburgh, upon tuesday the twentieth of December, about eight at night, and, in a day or two after, came his *Majesties* answer here subjoyned.

The Kings Answer to the Councils Letter

18 Decemb: 1681.

C. R.

Most dearly &c. having, this day, received your Letter, of the 14. instant, giving an account, that our Advocate having been ordered by you to insist in that Process raised at our instance against the Earl of Argyle, he was, after full debate, and clear probation, found guilty of Treason, and Leasing making, betwixt us, our Parliament, and our people; and the reproaching our Laws and Acts of Parliament: We have now thought fit, notwithstanding of what was ordered by us in our Letter to you of the 15. of November last, hereby to authorize you to grant a warrand to our Justice General, and the remanent Judges of our Justice Court, for proceeding to pronounce a Sentence, upon the Verdict of the Jury, against the said Earl; nevertheless it is our express pleasure, and we do hereby require you, to take care, that all execution of the Sentence be stopped, untill we shall think fit to declare our further pleasure in this affair: For doing whereof, &c.

Which answer being read in *Council* on the thursday, and the *Court of Justiciary*, according to its last adjournment, as shall be told you, being to meet upon the fryday, after a little hesitation in *Council* whether the *Court of Justiciary* could proceed to the sentence of forfeiture against the *Earl* he being absent, it was resolved in the affirmative; And what were the grounds urged, either of *hesitation* or *resolution*, I cannot precisely say, there being nothing on record that I can learn. But that you may have a full, and satisfying account, I shall briefly tell you what was ordinarily discoursed, a part whereof I also find in a petition given in by the Countess of Argyle to the Lords of Justiciary, before pronouncing sentence, but without any answer or effect. It was then commonly said, that by the old Law, and custom, the *Court of Justiciary* could no more in the case of *Treason* then of any other *Crime* proceed further against a person not compearing, and absent, then to declare him *Out-Law*, and *Fugitive*: And that, albeit it be singlar, in the case of *Treason* that the trial may go on, even to a final sentence, tho the partie be absent, yet such trials were only

only proper, to & alwayes reserved for *Parliaments*: And that so it had been constantly observed untill after the Rebellion in the Year 1666: But there being severall persones *Notourly* engaged in that rebellion, who had escaped, and thereby withdrawn themselves from *Justice*, it was thought, that the want of a *Parliament*, for the time, ought not to afford them any immunity; and therefore it was resolved by the *Council*, with advice of the *Lords of Session*, that the *Court of Justitiary* should summond, and proceed to trial, and sentence, against these absents, whether they appeared or not, and so it was done: Only because the thing was new and indeed an innovation of the old custom, to make all sure, in the *first Parliament* held thereafter, in the Year 1669, it was thought fit to confirm these proceedings of the *Justitiary*, in that point, and also to make a perpetual statut, that, in case of *open Rebellion*, and *Rising in armes* against the King, and Government, the *Treason*, in all time coming, might by an order from his Majestie's Council be tried, and the actors proceeded against by the *Lords of Justitiary*, even to final sentence, whether the traitours compeared or not. This being then the present Law, and custom, it is apparent in the *first place* that the *Earl's case*, not being that of an *open Rebellion* and *Rising in Armes*, is not at all comprehended in the Act of Parliament, So that it is without question that, if in the beginning he had not entered himself prisoner, but absented himself, the *Lords of Justitiary* could not have gone further, then, upon a citation, to have declared him *fugitive*. But others said that the *Earl* having both entered himself prisoner, and compeared, and after *debate* having been *found guilty*, before he made his escape, the case was much altered. And whether the *Court* could, notwithstanding of the *Earl's* interveening escape, yet go on to sentence was still debatable: for it was alledged for the *affirmative* that seeing the *Earl* had twice compeared, and that, after *debate*, the *Court* had given judgment, and the *Affize* returned their *Verdict*, so that nothing remained but the pronouncing of *sentence*, It was absurd to think that it should be in the power of the *partie*, thus *accused*, and *found guilty*, by his escape to frustrate justice, and withdraw himself from the punishment he deserved. But on the other hand it was pleaded for the *Earl*; That first, It was a fundamental rule, *That until once the cause were concluded no sentence could be pronounced*; Next that it was a sure *Maxime* in Law, that in *Criminal Actions* there neither is nor can be any other conclusion of the cause then the parties *presence and silence*; So that, after all that had past, the *Earl* had still freedom to adde what he thought fit, in his own defence, before pronouncing sentence, and therefore the *Lords of Justitiary* could no more proceed to sentence against him being *escaped* then if he had been *absent* from the beginning, the *cause* being in both cases equally *not concluded*, and the *principle* of Law uniformly the same, *viz. that in criminals* (except in cases excepted) *no final sentence can be given in absence*: For, as the Law, in case of *absence* from the beginning, doth hold that *just temper* as neither to suffer the *contumacious* to go altogether unpunished, nor, on the other hand, finally to condemn a *partie unheard*. And therefore doth only declare him *fugitive*, and there stops: So in the case of an *escape*, before sentence, where it cannot be said the *partie* was fully heard, and the *cause concluded*, the Law doth not distinguish, nor can the parity of reason be refused. Admitting then

that the Cause was so far advanced, against the *Earl*, that he was found *Guilty*; Yet 1. This is but a *declaring* of what the Law doth as plainly presume against the partie absent from the beginning, and consequently, of it self can operate no further. 2ly. The finding of a partie *Guilty* is no *Conclusion* of the cause. And 3ly. As it was never seen, nor heard, that a *Partie* was condemned *in absence*, (except in excepted cases) whereof the *Earl's* is none, so he having escaped and the Cause remaining thereby *unconcluded*, the general rule did still hold, and no sentence could be given against him,

It was also remembred that the *dyets* and *dayes* of the justice Court are *peremptour*; and that in that case, even in *Civil* far more in *Criminal Courts* and *Causes*, a *Citation* to hear *Sentence* is constantly required: which induced some to think, that at least the *Earl* should have been lawfully cited to hear *Sentence*, before it could be pronounced. But it is like this course, as confessing a difficulty, and occasioning too long a delay, was therefore not made use of. However, upon the whole, it was the General Opinion, that seeing the denouncing the *Earl* *Fugitive* would have wrought much more in *Law* then all that was commonly said; at first, to be designed against him: And that *his Case* did appear every way so favourable, that impartial men still wondered how it came to be at all questioned, It had been better to have sifted the process, with his escape, and taken the ordinary course of Law, without making any more stretches.

But as I have told you, when the Fryday came, the *Lords of Justiciary*, without any respect, or answer given to the *Petition* above-mentioned, given in by the *Countess of Argyle* to the Court for a stop, pronounced *Sentence*, first in the Court, and then caused publish the same, with all solemnity, at the *Mercat Cross of Edinburgh*.

For as much as it is found by an *Affize* That Archibald Earl of Argyle is guilty & culpable of the crimes of Treason, Leasing-making, & Leasing-telling, for which he was detained within the castle of Edinburgh, out of which he has now since the said Verdict made his Escape: Therefore the Lords Commissioners of Justiciary decern and adjudge the said Archibald Earl of Argyle to be execute to the death, detained as a traitour, and to underly the paines of Treason, & other punishments appointed by the lawes of this Kingdom, when he shall be apprehended, at such a time, and place, and in such manner as his Majesty in his Royall pleasure shall think fit to declare and appoint: And his Name Memory and Honours, to be extinct: And his Armes to be riven forth, and delete out of the Books of Armes, *swa* that his Posterity may never have place nor be able hereafter to bruike or joise any Honour, Offices, Titles, or Dignities, within this Realme in time coming and to have forfeited, amitted, and tint, all and sundry his Lands, Tenements, Annua-rents, Offices, Titles, Dignities, Tacks, Steedings, Rowmes, Possessiones, Goods, and Geere whatsumever pertaining to him, to our Sovereign Lord, to remain perpetually with his Highness in property. Which was pronounced for Doom -- 23 December 1681.

After the reading (and publishing) whereof, The *Earl's Coat of Armes*, by order of the Court, was also torn, and ranversed, both in the Court, and at the *Mercat Cross*: Albeit some thought that this was rather a part of the Execution, which his *Majesties Letter* discharges, then a necessary Solemnity, in the Publication, and the *Advocate* himself sayes. p 61. of his printed *Criminals*, That it should only be practised in the crime of *Perduellion* but not in other *Treasons*.

*The Reasons and Motives of the Earl's escape, with the
Conclusion of the whole Narrative*

THE *Earl's* escape was at first a great surprise, both to his friends and unfriends: for, as it is known that his *Proceß*, in the beginning, did appear, to the *less concerned*, more like a piece of pageantry than any reality; and even by the more concerned was accounted but a politik design, to take away his *Offices*, and lessen his *Power*, and *Interest*: So neither did any of his *Friends* fear any greater hazard, nor did most of his *unfriends* imagine them to be more apprehensive. Whereby it fell out, that upon report of his *escape*, many, and some of his *well-wishers*, thought he had too lightly abandoned a fair *Estate*, and the probable expectation he might have had of His *Majesties* favour: As also some, that were judged his greatest adversaries, did appear very angry, as if the *Earl* had taken that course, on purpose to load them with the odium of a design against his life. And truly, I am apt to think, it was not only hard and uneasy for others to believe, that a Person of the *Earl's* quality, and character, should, upon so slender a pretence, be destroyed, both as to life, and fortune, but also that he himself was slow enough to receive the impressions necessary to ripen his resolution; and that if a few *Accidents*, as he says himself, happening a little before his escape, had not as it were opened his eyes, and brought back, and presented to him several things past, in a new light, and so made all to operate to his final determination, he had stayed it out to the last.

Which that you may the better understand you may here consider the several particulars, that, together with what he himself hath since told some friends, apparently occurred to him in these his *second thoughts*, in their following order.

And first you have heard, in the beginning of this *Narrative*, what was the first occasion of the *Earl* his declining in his *Highness's* favour: You may also remember, that his *Majesties* Advocate takes notice, that he debated against the *Act* enjoining the *Test*, in the *Parliament*: And, as I have told you, he was indeed the Person that spoke against excepting the *King's* Brothers, and Sons, from the *Oath* then intended for securing the *Protestant Religion*, and the Subjects *Loyalty*, not thinking it fit to complement with a *Privilege* where all possible caution appears rather to be necessary: And this a reverend *Bishop* told the *Earl* afterwards had downright fired the kiln. What thereafter happened in *Parliament*, and how the *Earl* was alwise ready to have laid all his *Offices* at his *Majesties* feet: And how he was content, in *Council*, to be held a *Refuser of the Test*, and thereby incur an intire deprivation of all publik *Trust*, is above fully declared, and only here remembred, to show what *Reason* the *Earl* had, from his first coming to *Edinburgh*, in the end of *October*, to think that something else was intended against him then the simple divesting him of his *Employments* and *Jurisdictions*. And yet such was his *Assurance* of his Innocence, that when ordered by the *Council* to enter his Person in *Prison* under the pain of *Treason*, he entered freely, in an *Hakney coach*, without either hesitation or noise, as you have heard.

2ly, The same day of the *Earl's* commitment, the *Council* met, and wrote
(as

(as I have told you) their Letter to His Majesty, above set down, Num. 22. Wherein they expressly charge him with *Reproaching*, and *Depraving*: But yet neither with *Perjury* nor *Treason*; and a few dayes after, the Earl wrote a Letter to his *Highbness*; wherein he did endeavour to remove his offence, in termes that, it was said, at first had given *satisfaction*: But yet the only return the Earl had was a *criminal Summons* containing an *Indictment*, and that before any answer was come from his *Majesty*. And then, so soon as his *Majesties* answer came, there was a new *Summons* sent him, with a new *Indictment*, adding the crimes of *Treason* and *Perjury* to these of *Reproaching* and *Depraving*, which were in the first *Libel*, as you have heard above, whereby you may perceive, how early the design against the Earl began to grow, and how easily it took encrease, from the least encouragement.

3ly. When the *Earl* petitioned the *Council* for *Advocates* to plead for him: Albeit he petitioned twice, and upon clear *Acts of Parliament*, yet he had no better answer then what you have above set down. And when the *Earl's* *Petition*, naming *Sir George Lockhart* as his ordinary *Advocate*, was read in *Council*, his *Highbness* openly threatned, that in case *Sir George* should undertake for the *Earl* he should never more plead for the *King* nor *Him*. But the *Earl* taking *Instruments* upon *Sir George* his refusal, and giving out, that he would not answer a word at the *Bar*, seeing the benefite of *Lawyers*, according to *Law*, was denyed him; *Sir George*, and other *lawyers*, were allowed to assist him, but still with a *Grudge*. Likeas afterwards, they were questioned and convened before the *Council* for having, at the *Earl's* desire, signed their *positive Opinion* of the case. At which time it was also said in *Council* by His *Highbness*, That their fault was greater then the *Earl's*: However we see that as he was the occasion of the anger so he hath only found the smart of it.

4ly. The whole *Procefs*, with the *Judgment* of the *Lords of Justiciary*, and *Verdict* of the *Assize*, whereby the *Earl* was found guilty, as you have seen (notwithstanding of what hath so plainly appeared and was so strongly pleaded in his behalf) of *Leasing-making*, *Depraving*, and *Treason*, Is of it self a clear *Demonstration* that either the highest punishment was intended for so high a guilt, or that, at least, it was no small *Humiliation* that some designed for him: It being equally against reason, and prudence, setting aside the Interest of Justice, to strain things of this nature beyond the ends truly purposed, and which, in effect, are only the more to be suspected the more they are concealed.

5ly. The *Procefs* being carried on to the *Verdict* of the *Assize*, and the *Council* being tyed up by His *Majesties* Letter, before pronouncing Sentence, to send a particular account to his *Majesty* of what the *Earl* should be found guilty of, for His *Majesties* full information: The *Council* doth indeed dispatch away a new Letter immediatly, for His *Majesties* leave to proceed; but in stead of that particular account required by his *Majesty* for his full information, all the information was ever heard of to be sent by the *Council* was what is contained in the body of the Letter, wherein they, briefly, but positively, affirm, That after full debate, and clear probation, he was found guilty of *Treason*. Which, all men must say, was far better contrived to prompt his *Majesty* to a speedy allowance then to give him that particular information of the case which

His

His Majesties Letter expressly requires, and *the Earl* expected should have been performed.

But further, the *Council* was commanded to sign this *Letter*, not simply in the ordinary form, but by a special *Command* laid on every *Member*, and the *Clerk* appointed to go about, and get their *Subscriptions*, telling them *they were Commanded*, and complaining to the *Duke* when any *scrupled* to do it. The strictness of which orders is apparent enough from the very *Subscriptions*, where you may not only read the names of *Bishops* subscribing *in causa sanguinis*, but some of the *Earls Friends* and *Relations* who wanted courage to refuse; And, in effect, how many of all the *Members* did it willingly is hard to say, seeing generally they excuse the deed in private.

6ly. About a week or two before the *Trial*, the *Earl* had notice, that at a *close Junctō*, where were Persons of the greatest eminency, it was remembered by one present, how that Anno 1663. The *Earl* had been pardoned by his Majesty, after he had been found guilty by the *Earl of Middletoun*, and that *Parliament*. And that then it was looked on as an error in the *Earl of Middletoun*, that he had not proceeded to *Execution*, albeit his Majesty had given command to the contrary, because (as it was said) it would have been but the same thing to him. But now, adds this Kind Remembrancer, *The case is much more easie. Now His Royal Highness is on the throne: It might have cost Earl Middletoun a frown, but now it can signify nothing, but will rather be commended in His Royal Highness, as acting freely like himself. The stop of the sentence looks like a distrust, but this will vindicate all and secure all: And as the first part of the Story the Earl remembered well he had heard it from the same Person, An: 1664, & had reported it to the Duke of Lawderdale a little after. So the second part being of a very well known dialect could not but give the Earl the deeper impressions. It was further told the Earl, at the same time when the Councils Letter to obtain his Majesties assent to the pronouncing Sentence, & leaving all to discretion, was sent, that it was thought fit that nothing should appear but fair weather till the very close. Yet was the Earl so confident of his own innocence, and His Majesties Justice, that he did not doubt but his Majesty seeing the Process would, at least, put a stop to the Sentence. But after the Councils Letter was gone, in such Terms as you have seen, to seek Liberty from his Majesty to proceed to Sentence (without either double, or abbreviat of the Process sent with it) and no doubt smooth insinuations made with it that all designed was to humble the Earl, or clip his wings: And that this Letter was hastied away by a fleeing packet to prevent the Earls Application, which it could not but do; and so could not but have weight, and prevail with his Majesty, (to whom the Earls Petition, as coming too late, was indeed never presented) Then, and not till then, The Earl began to have new thoughts.*

7ly *The Earls Trial* having been upon *moonday*, and *tuesday* the 12th and 13th of *December*: upon the 14th, the *Councils Letter* was dispatched: and upon the 15th, The *Earl* intreated, by a friend, for liberty to speak to His Royal Highness; whose answer was, *That it was not ordinary to speak to criminals, except with Rogues on some plot, where discoveries might be expected: Yet his Highness said, he would advise upon it. But, upon fryday the 16. he did refuse it. Yet the Earl did renew his suit, and urged, that he had sent a Petition to his Majesty, which was the first he had sent upon that occsaion, & that, before the return should come, he*

was desirous to have his *Highness* answer, that he might owe some part of the favour he expected to his *Highness*.

But on *Moonday morning*, the 19. the *Earl* was told, he was not like to have any *access*, and, in the afternoon, he heard that the return of the *Councils Express* was looked for, on thursday the 22. being the *Council day*. And further, That the *Justice court* (which according to its custom had sat the same *Moonday*, and, in course, should have adjourned till *Moonday* the 26 of December, or, because of *Christmas*, to the first *Moonday* of January, was, for the *Earl's* sake, adjourned till *Fryday* the 23. to the end that immediately upon the *Kings Return* they might pronounce *Sentence*. He was moreover informed that his *Royal Highness* was heard say, that, if the *express* returned not timeously, he would take upon himself what was to be done. Which being general, and dark, was the more to be suspected. All this, the *Earl* told, made him the same *Moonday* late cast in his thoughts whether it were not fit for him to attempt an escape; but his doubtings were so many he could resolve nothing, that night, except to put off till *Wednesday*. Yet on *Tuesday morning* he began to think, if he did at all design to escape, he had best do it that same evening. However he was, even then, not fully resolved, nor had he as yet spoke one word of it to any mortal. But about ten of the Clock this *Tuesday*, his *Highness* absolute refusal to suffer the *Earl* to see him, untill his *Majesties Return* came, was confirmed: And about *Noon* the *Earl* heard that some *Troups* and a *Regiment of foot* were come to *Town*: And that, the *Next day*, he was to be brought down from the *Castle* to the common *Jail* (from which *Criminals* are ordinarily carried to *Execution*) and then he resolved to make his escape, that very night, and yet did not conclud it thoroughly till five of the Clock in the evening: At which time he gave directions about it, not thinking to essay it, till near ten: But at seven one coming up from the city, and telling him that new orders were privately given for further securing of him, that the *Castle guards* were doubled, and none suffered to go out without showing their faces, and that some *Ladies* had been already put to do it, and therefore dissuading him to attempt any escape, because it was impossible: the *Earl* said, No, then it is full time. And so he made haste, and within half an hour after, by *Gods blessing*, got safe out, questioned prettily warmly by the first sentry, but not at all by the main guard, and then, after the great gate was opened, and the lower guard drawn out double, to make a lane for his company, one of the guard who opened the gate took him by the arm, and viewed him: But it pleased God he was not discerned. When he was out, he was not fully resolved whither to go: Home he had judged safest: But he thought it might breed *Mistakes* and *Trouble* that he designed not: So he resolved to go for *England*, and to take the road; That by *Post* he might be his *Majesties* first informer of his escape. But, being disappointed of horses that he expected, he found that the notice of his escape was got before him; And soon after, as he came the length of *Newcastle*, heard that his *Majesty* had given way to pronounce *Sentence* against him, according as he had apprehended from the circumstances and other grounds I have told you, which made him judge, it would be an undiscrēt presumption, in that state, to offer himself to his *Majesty*, while he knew none durst address him, and so he rather choosed to shift in the wide *World*, till his *Majesty* might

might be at some greater *freedom* both to understand his case and apply suitable remedies. His Majesties clear and excellent understanding, and gracious and benign disposition, do fully assure him, that his Majesty doth not, in his thoughts, charge him with the *least Disloyalty*, and that he hath no Complacence in his ruine. But if His Majesty do, at present, ly under the pressure of some unlucky *influences*, not so easy to his Royal inclinations, the Earl, it seemes, thinks it reasonable to wait patiently for a better opportunity. It may indeed appear strange, that *Innocence, & Honour*, oppressed in his Person, almost beyond a parallel, should not, ere now, have constrained him to some publik *Vindication*: Especially when to the horrid *Sentence* given against him his *Adversaries* have further prevailed to cause His Majesty dispose, not only of his *Heritable Offices*, and *Jurisdictions* (the pretended eye - fore) But also upon his *whole Estate, and Fortune*, with as little consideration of the Earl's personal Interest as if he had fallen for the blackest *Treason*, and most atrocious *Perduellion*. But, besides that some things are of themselves, so absurdly wicked that all palliating pretences do only render them the more hateful, and the very *simple hearing* doth strike with an *horror*, not to be hightned by any representation: Next that the Earl, being so astonishingly overtaken for *words*, as fairly and honestly uttered as he could possibly devise, doth, with reason, apprehend that there is nothing he can say in this matter, though with the serenest mind, and in the greatest truth, and sobriety, that may not be construed to flow from a design to *lay blame* where hitherto he hath been tender to give any ground of offence. Ifay (beside these things) he is withall (I know) most firmly perswaded, That, if ever he shall have the happiness to be once heard by His Majesty, and in his *presence* allowed to explain a few *Particulars*, in duty here omitted, His Majesties justice, and goodness will quickly dispell all the *clouds* that now hang over him, and restore him to that *favour* wherein he hath sometime reckoned himself very happy, and which he will ever be most ready to acknowledge. And therefore all that in the mean time he judged necessary, or would give way to, was that for preserving the remembrance of so *odd a Transaction*, untill a more seasonable juncture, some *Memorials* should be drawn, and deposited in sure keeping: which being grown under my hand unto this *Narrative*, I thought, I could not better observe his order then by transmitting it to your faithful custody. I have carefully therein observed the *truth*, in point of *fact*, avouching nothing but upon the best and clearest evidence can possibly be expected: nor have I, as to the manner, licenced or indulged my self in any severity of expression, which, I thought, could be justly, in such a case, omitted, without betraying the *Cause*. Yet if you now, or any other hereafter, shall judge, that I do sometime exceed, let it not be imputed to him, for, as he did indeed charge me to guard against any more *warm* or *vehement expression* then the merit and exigence of the subject do indispensibly require, so I am assured that he silently, and patiently, waits on the *Lord*, committing his way to him, and trusting in him, that he may bring it to passe: and that he shall bring forth his *righteousness as the light*, and his *judgment as the noon-day*.

POSTSCRIPT.

S I R,

HAVING in this Narrative sometimes adduced, as you have seen, the *Advocate's* own authority, *ad hominem*, I shall here, as I promised, subjoin such passages out of his printed Book as, though they deserved not a place above, may yet make a pertinent POSTSCRIPT.

And, omitting what in that Book, called *The Laws and Customs of Scotland in matters criminal*, he frequently repeats, from the known grounds of Law, of the nature of crimes and the design of criminal Laws; *viz.* „ That as there can be no crime „ without a fraudulent purpose, either apparent or proven; So it was the design of „ Lawgivers, only to punish such acts as are designedly malicious. I desire you only to consider the particulars following. And

1. Pag. 11 l. 7. of his *Book of Criminals*, having made the question, „ Whether what „ tends to a crime, not perfected, doth fall under the Statute, or Law, by which that „ crime to which it approaches is punished: He instances in the crime of „ Miscon- „ struing His Majesties Government, and Proceedings, or depraving his Laws, „ which, as he says, is punishable by death Ja. 6. Par. 10. Act 10. And then further „ moves, Whether papers, as tending to misconstrue His Majesties proceedings, and „ Government, or bearing insinuations which may raise in the people jealousy against „ the Government, be punished by that Law. Which being one of the great crimes pretended and libelled against the *Earl*, I shall here (omitting his reasons in the *affirmative*, which have not the least ground in the *Earl's* case, as you have heard) represent to you how exactly he himself, and others, have acted, for the *Earl's* overthrow, all these dangerous, and pernicious things, from which he argues in the *negative*. His words then are these.

„ And that such insinuations, and tendencies are not punished criminally, he says. „ 1. It is the interest of mankind to know expressly what they are to obey, especially „ where such great certifications are annexed as in crimes. 2. The Law, having „ taken under its consideration this guilt, has punished the actual misconstruing, or „ depraving; but has not declared such insinuations or tendencies punishable: *Et in statutis casus emissus habetur pro omisso.* 3. This would infallibly tend to render „ all judges arbitrary; for tendencies and insinuations are in effect the product of con- „ jecture, and papers may seem innocent, or criminal, according to the zeal, or „ humour, as well as malice of judges; men being naturally prone to differ in such con- „ sequential inferences, and too apt to make constructions in such, according to the „ favour or malice they bear to the Person or Cause: Are not some men apt to construct „ that to tend to their dishonour which was designed for their honour; and to think „ every thing an innovation of Law or Privilege which checks their inclination and „ design? Whereas some judges are so violent in their Loyalty as to imagine the meanest „ mistakes do tend to an opposition against *Authority*; and thus *Zeal*, *Jealousie*, *Malice*, or *Interest* would become judges: 4. Men are so silly, or may be in such haste, „ or so confounded, (and the best are subject to such mistakes) as that no man „ could know when he were innocent; simplicity might oft times become a crime, and „ the fear of offending might occasion offence, and how uncomfortably would the „ people live, if they knew not how to be innocent.

2ly. p. 47 l. 9. Of the same Book, he says, „ That the 8th Point of Treason is to „ impugn the dignity, and Authority of the three Estates; or to seek, and procure „ the innovation and diminution of their Power, and Authority. Act 103. Ja. 6. p. 6. Now this being another of the crimes charged upon the *Earl*, hear how the *Advocate* there

there understands it. „ But this (he adds immediatly) is to be understood of a (N B.) „ direct impugning of their Authority; as if it were contended, that Parliaments were „ not necessary, or that one of the three Estates might be turned out. Which how „ vastly different from his indirect, forced, and horrible inferences, in the *Earl's* case, is plain and obvious.

3ly, *ibid.* p. 58. l. 2. After having said, „ That, according to former Laws, no „ sort of Treason was to be pursued in absence before the Justices; And urging it to be reasonable, he adds, „ Nor is it imaginable but if it had been safe it had been granted „ formerly. And l. 31. he says, „ The Justices are never allowed, even by the late *Act* „ of *Parliament*, to proceed to sentence against absents. but such as are pursued for „ *Rising in Arms against the King*. The true reason whereof, he tells us, is that the „ Law is not so inhumane, as to punish equally presumed and real guilt: And that „ it hath been often found, that men have absented themselves rather out of fear of a „ prevailing *Faction*, or corrupt *witnesses* &c. then out of consciousness of guilt: Reasons which albeit neither true nor just, (seeing that the Law punishes nothing, even in case of *absence*, but either manifest contumacie, or crimes fully proven: And that the only reason why it allows no other crime save *Perduellion* to be proceeded against in absence is because it judges no other crime *tanti*) yet you see how this whole passage quadrats with the *Earl's* case; Who being neither pursued for *perduellion*, nor present at giving sentence, was yet sentenced in absence, as a most desperate traitour.

4ly. *ibid.* p. 60. l. 24. Speaking of the Solemnities used in Parliament, at the pronouncing sentences for *Treason*; viz. That the *Pannel* receives his sentence kneeling: and that after the doom of forfeiture pronounced against him, the *Lyon*, and his *Brethren the Heralds* in their formalities come & tear his *Coat of arms* at the *Throne*; and thereafter hang up his *Escutcheon* *ranversed* upon the *mercat Croffe*: he adds, „ But „ this, I think, should only hold, in the crime of *Perduellion*, and then goes on to add, „ That the children of the delinquent are declared incapable to bruike any Office „ or *Estare* is another Speciality introduced in the punishment of *Perduellion* only. And yet both these terrible Solemnities were practised against the *Earl*, even by a *Court of Justiciary*, and not in *Parliament*: albeit he was not accused of *Perduellion*, nor be indeed more guilty of any crime than all the world sees.

5ly *ibid.* page 303 l. ult, he says, „ That verbal injuries are these that are committed by unwarrantable expressions, as to call a man a *Cheat*, a woman *whore*: „ But because expressions may vary, according to the intention of the speaker; therefore except the words can allow of no good sense, as *whore* or *thief*, or that there be „ strong presumptions against the speaker, the *injuriandi animus*, or design of injuring, as „ well as the *injuring words*, must be proven: and the speaker will be allowed „ to purge his guilt by declaring his intention; and his declaration, without an Oath, „ will be sufficient. 2ly. The pursuer should libell the design, and prove it, except „ the words clearly inferre it. 3ly. The pursuer is presently to resent the injurie. and „ if, at first, the words be taken for no injurie they cannot afterward become such. Which things, being applied to the *Earl's* words, do evidently say: That unless his words could allow of no good sense, or that there were strong presumptions against him, or that he could not purge his guilt, by declaring his intention, or that his words did clearly inferre the guilt, there could be no crime of *Slandering Reproaching or Depraving*, charged against him, except the *injuriandi animus*, as well as the words, had been both libelled, and proven. But so it is that his words do manifestly allow of a good sense, that there is not the least presumption of injurie can be alledged against him; That he did most plainly purge himself of all suspicion of guilt, by declaring his sound and upright intention; And that his words do not inferre, either clearly, or unclearly, the smallest measure of guilt; And withall neither was the *injuriandi animus* at all proven. But on the contrary, the words at first were taken for no injurie; so that they could not afterward become such, As is above fully cleared: Ergo, even the *Advocate* being judge, the *Earl* is no *Slanderer*.

6ly. If it were necessary, I could further tell you several things that he alledges to be sufficient for purging a man of any criminal intention: As, where he says, *ibid.*

p. 567. l. 2. „ That, in matters of fact, persons, even judicious, following the Faith „ of such as understand, are to be excused. And l. 30. „ That, if it appear by the meanness of the crime (he should say the smallness of the deed: And what can be less then the uttering of a few words in the manner that the *Earl* spoke them?) „ That „ there was no design of transgression; And that the committer designed not, for so „ small a matter to commit a crime (much less such horrid ones as *Depraving* and *Treason*) „ In that case, the meanness of the transgression (or deed) ought to defend against the relevancy &c. But to give you one instance for all, how much the *Advocate* may, one day or other, be obliged to plead the *innocence of his intentions*, to free himself of words downright in themselves *slandrous and depraving an Act of Parliament*; much better nor he understands it, and in fresh and constant observance. Ibid. p. 139, towards the middle, speaking of the 151. Act. Ja. 6. P. 12. Whereby it is statut: „ That „ seeing diverse exceptions, and objections rises upon criminal libells, and parties are „ frustrate of Justice by the alledged irrelevancy thereof. That in time coming all criminal libells shall contain, that the persons complained on are *Art & Part* of the crimes „ libelled; which shall be relevant to accuse them thereof: swa that no exception, „ or objection take away that part of the libell in time coming. He sayes, „ That he „ finds no *Act of Parliament* more unreasonable, For the statutory part of that Act, „ committing the triall of *Art and Part* to *Affixers*, seemes most unjust: Seeing in committing the greatest questions of the Law to the most ignorant of the Subjects, it puts a „ sharp sword in the hands of blind men. And the reason of this *Act* specified in the „ Narrative is likewise most inept, and no wayes illative &c. *What reproaches! What Blasphemies!* The *Earl* said not one word against any *Act of Parliament*: But on the contrary, that he was confident the *Parliament* intended no contradiction, and that he was willing to take the *Test* in the *Parliament*s sense. But here the *Advocate* both sayes and prints it, That an *Act of Parliament* is most unreasonable and most unjust, and its reason most inept, and that it puts a sharp sword in the hands of blind men Whereof the smallest branch is infinitely more reproachfull then all can be strained out of the *Earl*s words. But Sir, *Speculation is but Speculation* and if the *Advocate* when his day comes, be as able to purge himself of practical depravations as I am inclined to excuse all his visionarie lapses notwithstanding of the famous Title *Quod quisque juris in alterum statuerit ut ipse eodem jure utatur*, he shall never be the worse of my censure,

F I N I S.



APPENDIX

In Answer to a late Pamphlet
called, *A Vindication of His Majesties Government, and
Judicatories, in Scotland, --- Especially with a Rela-
tion to the late Earl of Argyl's Process, In so
far as concerns the said Process.*



Now remains that we consider the fore-mentioned *Paper* called a *Vindication &c.*, And though the account you have had in the *Narrative* may abundantly satisfy all rational men as to any thing contained in this *Vindication*, in relation to the Earl's process (my only concern) yet because the *Writer* of it hath taken liberty to vent many falsehoods, known to be such to himself, and the whole Kingdom; and that in such a positive, presuming *Stile*, as, with his *insinuat character*, seems to be purposely designed to impose upon strangers, and lead them from the *Mist* he pretends to discuss into *gross Darknes*; I shall here, without giving you the trouble of letter upon letter, transcribe shortly what my friend, who sent me the *Narrative*, hath since given me the occasion to remark upon this *Vindication*, in so far as it refers to it, without digressing to other things, which no doubt others, more concerned, and better qualified, will not fail to examin.

And, after having first wisely projected to disarm all his opponents, by robbing them of the liberty of the *press*; that himself may use it, without control, and spread his informations, and *vindications* without reply, as

*Diurnals writ for Regulation
Of Lying to enform the Nation.*

And, in the next place, chaffed himself by some rambling reflections on past controversies (which yet, for all the boast he makes of the present *blessed composure* of affairs in Scotland, if he and his associates still persist to treat them after their manner, will, I fear, never finally end, untill they be rectified, and all former errors for ever corrected) He comes to notice the *Earl's Process*, and a pamphlet called, *the Scotch mist*, that takes pains, as he says, to make it appear an unanswerable instance of the arbitrariness of *Scotch Judges*. Where having prefaced just as much in their vindication as may be said for all the *Judges* of the world, whereof yet we know that thousands are ignorant, corrupt, and violent: And

next

nixt told us, very discreetly, that *Earl Strafford* was murdered by King, Lords, and Commons, because forsooth that they following the known rule of the civil Law, *Si quam penam Princeps irrogavit nec ad exemplum trahitur, nec personam transgreditur*, made an *Act*, That none should die by that preparative; with some other stories of the like nature, backed with a few fables of his own invention. For clearing matter of Fact he sayes, first, That the *Earl of Argyll's* learned Judges were not a pack't Commission, but the ordinary Judges of the Nation. But what then, if this lessen their tentation, doth it not rather aggravat their injustice? But 2ly. Not to trouble you with the just and true characters of some of them (which to persons unacquainted might possibly appear a libel) is it not well known, that, at the first, and untill sufficient assurances of the bench were obtained, there was a resolution to have given, or pack't (as our Author speaks) *Assessors* with them? 3ly. Were they not all Judges of the late edition, to wit, no more *ad vitam*, or *culpam*, as of old, but *durante beneplacito*? And 4ly. Are not such as were most forward, and active, in the *Earl's* condemnation, proportionally rewarded? And as for the *Earl's* Jurors or *Assizers*, you have heard a full account of them, in the Narrative.

2ly. Our Author tells us, That the King, and his Ministers were under no tentation, against the *Earl*: That there was no design against his life: That His Royal Highness, albeit informed of an escape intended, yet gave expresse order not to keep him strictly, even after he was found guilty; As also His Highness ordered, that *Advocates* should be prest to appear for him: And in fine that the *Earl* was very discreetly, and respectfully used.

And. 1. As to His Majesty, He is indeed most freely assailed of all, either inclination or tentation in this matter, except that of importunity. But 2ly. For His Ministers the contrivers, and actors, their tentations may be guessed at, by what is said in the Narrative: And if they also had none, it only sayes that they run without driving, and are the lesse excusable. 3ly. How forward His Highness and the Council were to press *Advocates*, in the *Earl's* cause, and to grant his *Petitions*, though founded on clear *Acts* of Parliament; how false it is that his Royal Highness had any information of the *Earl's* intention to escape, and notwithstanding ordered that he should not be strictly kept; and whether or not there was a design to take the *Earl's* life, you have already (and I hope plainly and satisfyingly) seen in the Narrative: But pray remark the folly of this self-condemned reasoning. For. 1. If the *Earl* was truly guilty of these worst of crimes, *Leasing-making*, *Depraving*, and *Treason*, why should he not have died? And if he was not guilty, what wickedness was it to give Sentence against both his Life and Fortune, and since, by disposing on his whole estate, to execut it as far as possible? And 2ly. Is it not a pleasant conceit to imprison, arraign for *Treason*, and find guilty, and crave leave to Sentence, a Person of the *Earl's* quality; And then to take away all his Estate; and yet to tell the world, there was no design against his Life? *Solomon* sayes, As a Mad man, who casteth firebrands, arrows, and death, so is the man that deceiveth (much more condemneth) his neighbour, and saith, am not I in sport? And *Machiavel* (whose *Politiks*, may be, with some are in more request then *Solomons Proverbs*) taxeth it as no less impolitik to take away

away a man's Estate, and yet spare his Life. And yet notwithstanding our *wiser*, and more *politik* Author will have us to believe neither. But 4ly. *Yet the Earl was very respectfully used.* And this must go far from such hands: And was he not indeed so, when he was. 1. Summarily imprisoned, without *Bale*, or *Mainprise*? 2ly. Arraigned before the *Justice-Court*, and not reserved to the *Parliament*, as is usual for Persons of his rank, especially the *Parliament* being then current, and its next Session near approaching? 3ly. Refused access to, or opportunity to speak with *His Royal Highness*, though it was often and much desired? And 4ly. When by the *Sentence* his *Blood* was *tainted*, his *Posterity* disabled, and his *Escutcheon* and *Arms* thereafter torn, and ranversed, as if he had been the worst of traitors? I grant, it was observed, that the debate in the *Process* was managed, on both hands, with a more than ordinary coolness: but as something must be imputed, on the one part, to *His Majesties Advocate's* secret conviction of these strange impertinencies whereunto the discharge of his Office obliged him, and on the other hand, to the *Earl's Advocates* their perswasion, that his words were so innocent that hardly any thing could be said that was not equally criminal; so it is certain that the main cause was, that both the one and the other knew that the design was laid, and the issue inevitable.

Thirdly. This Vindicator says, That the Earl's Jurisdictions and Estate could be no tentation; for the late Advocate had given such reasons against his Right to these Jurisdictions and Superiorities as could not be answered; and that the King got nothing, for his Royal Highness procured more of it to his children then belonged to the Family, debts being payed: And the remainder was given among the Creditors, and the tithes returned to the Church.

But. 1. Our Author goes on still to disown tentations, which can signify nothing, save to confirm more and more that the *Earl* was overthrown and ruined by pure *Malice*. For if there was no tentation, either against his *Person*, or *Estate*, and yet notwithstanding of his innocence (which all men see) the former be subjected to a *Sentence* of death, and the later quite taken from him, must not this strange severity proceed from a very extraordinary good Nature? 2ly. Our Author disowns any design against the *Earl's life*: But affirms, *That there are reasons unanswerable against his Jurisdictions, and Estate.* And yet instead of making use of these reasons civilly, to take away his *Jurisdictions*, and *Estate*, his life is *criminally*, and *principally* persued. How are these things consistent? But that which is crooked cannot be made straight. 3ly. It is false that ever the late *Advocate*, or any other, represented any reasons, far less on answerable ones, against the *Earl's Rights*, either to his *Estate*, or *Superiorities*. And the whole truth in this matter is that he did indeed offer some reasons to the *Exchequer*, against the *Earl's Right* to his *Jurisdictions*, but which, at the same time, were so evidently refelled, by shewing, that the *Earl's Rights* were long anterior, and no way touched by all the *Acts* of *Parliament* whereon he founded, that *His Majesty*, after full information, did, first by his *Letter* (a copy whereof ye will find subjoyned) expressly order the passing, and confirming of the *Earl's Rights*; and then give a *special Instruction* unto his *Commissioner*, to ratify it, in plene *Parliament*, which was also done. And what the present *Advocate* did, in the last *Parliament*, and how it succeeded, with what else may be needful for

clearing of this point, you have already in the *Narrative*. 4ly. Our *Author*, first, confounds the *Earl's Estate* and his *Superiorities*, as if one and the same thing: Whereas a man's *Estate* includes also his *Property*. But the *Second* mistake, and the greater *cheat* is, because the word *Superiority* sounds more of power then the word *Property* doth, therefore the *Earl's* enemies do in his case constantly joyn his *Jurisdictions*, and *Superiorities*, as it both of the same nature, and equally amissable, for not taking the *Test*, or any the like cause. And hereby have they so far impressed *His Majesty* as to cause him also speak at the same rate: Whereas it is an uncontestable truth, that a *Superiority* in its *Right*, and as to the person that enjoys it, is plainly *Property*, and is only called *Superiority* because the Owner by granting, according to the use of the Feudal Law, a *Subaltern Right* to a *Vassal*, holding, or relieving of himself, for certain *Services*, or for a *Quit-rent*, thereby becomes his *Vassal's Superior*; a practice plainly authorized, and much recommended by old Acts of Parliament, as the best advancement of Policy. Which things are not said, as if the *Earl* had not as good a *Right* to his *Jurisdictions* as to his *Superiorities*; Seeing he is fully secured in both, by the Laws of the land; but *Jurisdictions* being of their own nature subject to many Laws and regulations that nowise concern *Superiorities*, or *Property*, and the *Earl's Superiorities* being in effect a considerable part of his *Estate*, it is very much his interest that they be distinguished, to prevent his adversaries impositions. But 5ly. That you may the better discover their designs against the *Earl*: Here, you see, the world is told, that he has no right to his *Jurisdictions*, and *Superiorities*: But, in the *Gift* that they have lately moved *His Majesty* to grant of the *Earl's forfeiture*, they make *His Majesties deed* to proceed upon quite different reasons, in these terms viz, That *His Majesty*, in the first place, wills, and declares, that all the *Earl's Jurisdictions*, Offices, *Superiorities*, &c. Shall forever be consolidat, and remain with the *Crown*, as being necessary for the support of his *Government*, and too dangerous for him, and his people, to be, heritably, in the hand of any of his subjects; and his *Majesty* never having designed to dispoſe the same,

Which considerations, though they might be of some moment in the case of a just forfeiture, yet in the *Earl's* case, wherein it is known that before his trial they were the main reasons pretended to work his overthrow, by this *sham-Treason*, they can nowise be regarded, because it is most certain, 1. That the *Earl's Superiorities* do no more concern the *Crown*, and *Government*, then his *Property*; and that by the same reasoning, or rather *Ostracism*, any man's *Estate*, whether *Superiority*, or *Property*, as men may phantasie them to exceed their arbitrary measures, may be taken from him, on as good pretexts. 2ly. That the reasons assigned do so little militate against the *Earl's Jurisdictions* that these *Jurisdictions* were expressly given to his Predecessors, and made heritable in his *Family*, for eminent *Services* performed to the *Crown*, and upon convincing experience that they could not be better disposed on, for the support of his *Majesties Government*, and protection of his people, especially against the *savage Islanders*, and their partakers: However some, because of their *Popery*, and *Barbarity*, think fit at present to patronize them. 3ly. With what colour can these things be alledged for consolidating with the *Crown* the *Earl's Jurisdictions*, and *Superiorities*, when

When we see *Jurisdictions*, and *Superiorities*, as considerable, that were taken from his *Family*, by his Father's *forfaulture* (whereof you have a just account in the *Narrative*) conferred upon the *Marquess of Huntly*; and new *Regalities*, and *Jurisdictions*, of as great import, bestowed upon the *Marquess of Queensberry*, and others, against most expresse Acts of Parliament. But 4^{ly}. The Truth and ingenuity of all this procedure may be best judged by the last *allegiance*, wherein they cause *His Majesty* affirm, under his great Seal That he never designed to dispoⁿ these *Superiorities* and *Jurisdictions* to the *Earl*. Albeit as to the *Superiorities* his *Majesty* never scrupled, and as to the *Jurisdictions* he did not only actually dispoⁿ them, but after being fully informed of all the objections could be moved in the contrary he did expressly own, ratify, and confirm the deed, first by his *Letter*, hereafter set down, then by his *special Instruction* to his *Commissioner*, and 3^{ly}. by his *solemn Ratification* in Parliament.

But suppose the *Earl* be unjustly spoiled of all his fortune, yet, sayes our *Author*, the King, by the generous interposition of his *Royal Highness* (for, if you will believe this *Loyal Vindicator*, it is still *His Highness* Clemency that mitigats *His Majesties* rigours) hath administrat very honestly, getting nothing to himself (for as to the *Earl's Jurisdictions* and *Superiorities*, though they were just now of that value as to be necessary to the King, for the support of the Government, and dangerous in the *Earl's* person to both King and people, yet here they are accounted less then nothing) but giving more of it to his *Children* then belonged to the *Family* (debts being payed) and the rest to the *Creditors*, and the tythes to the Church. A short specious account of a world of iniquity! for though the *Earl* be fully perswaded that his *Majesty* neither desires any thing of his *Estate*, nor expects any advantage by the destruction of his *Family*: yet is it not, in the first place, hard above measure, that the *Earl* should be in the same manner deprived, & divested of all, without the least consideration of his *Person*, as if he had been sentenced for the most hainous *Perduellion*? 2^{ly}. Notwithstanding all here said, and though it was once given out that the *Earl's eldest Son* should have a considerable addition to what he presently enjoys and that the rest of the *Children* should get their just *Provisions*, yet the eldest is still left lyable to the provisions of his *Brothers & Sisters*, and to severall of his Father's debts, without any releef; and hath not yet got one farthing, either in money or security, more then the settlement made upon him by the *Earl* at his marriage, wherein he was, & is, in Law secured, beyond the reach of any *forfaulture* could fall upon his Father. And for the rest of the *Children*, not only have they got no sufficient security, but some smal *Payments*, appointed them by his *Majesty*, are laid to be restrained unless the *Earl's Rights* be delivered up: A thing altogether unusual, & which argues in the Demanders a manifest diffidence of the Right of *forfaulture*, and were both inhumane, and is impossible for the *Children* to do. 3^{ly}. Waving the false, and invidious insinuation here made of the *Earl's* debts, take this brief account of the condition whereunto, at present, his *Estate* and *Creditors* are reduced. When *His Majesty* returned, the late *Marquess of Argyle* (as you may read in the *Narrative*) had undertaken, and stood engaged for debts of the *House of Huntly*, amounting to 35000^l Sterl: Yet upon *Argyle's* *forfaulture* the *Marquess of Huntly's Estate*, extending to 4000^l Ster: yearly Rent, whereof *Argyle* was legally posselt, for his releef, was taken from *Argyle*, and given to

Huntly, without any burthen, and all that debt left on the *Family of Argyle*. Thereafter his Majesty thought fit to restore this *Earl of Argyle* to a part of his Father's *old Estate*, and to appoint the rest of it for payment of *Creditors*, in the order then prescribed; whereupon the *Earl*, agreeing with as many of the *Creditors* as according to His Majesty's assignment acclaimed the remainder, he was settled in what he possesses, with a considerable burthen. And thus his *Right* was then established, though with the heavy prejudice of a great many other *Creditors*, who being truly *Creditors* of the *House of Huntly* became only *Creditors* to the late *Marquess of Argyle*, in the manner you have heard, and by the above-mentioned *Restitution* of the *Marquess of Huntly* were miserably cut off: But upon the *Earl's* present disaster, what neither material justice nor the merit of the Persons could obtain, against the *House of Huntly*, is now by importunity procured, against the *Earl of Argyle*, for the more effectual ruine of his *Family and Friends*, and these old *Creditors* of *Huntly*, who were no original *Creditors* of *Argyle*, brought in upon *Argyle's Estate*, to the exclusion of his proper *Creditors*. And further, least the real Securities, by *Mortgages*, and otherwise, that some of the *Earl's Creditors* have, should avail them, these are also made void, by the Act of *Quinquennial Possession*, and the other *Rigours* of *forfeitures*, only accustomed to be practised (and yet not without some mitigation) in the case of *atrocious*, and *open Rebellion* against the *King and Kingdom*. And besides all this, his Majesty hath been also moved to give away considerable *Superiorities*, and *Lands*, pertaining to the *Earl*, to several Persons, having no other pretension, or merit, saving an unreasonable enmity against the *Family of Argyle*. By all which it is evident, that, besides the horrible usage the *Earl* met with, in his *Trial, and Sentence*, not only is He himself wholly neglected, and his Children little regarded, in this late disposal of his *Estate*, but his proper *Creditors* and *Friends* are also prejudged, and postponed: And in effect his whole *Estate*, fair and opulent enough to have payed all his debts honestly, provided his Children competently, and sustained the dignity of his Rank honourably, cutted and carved on, before his eyes, at pleasure, and much of it parcelled out, and bestowed upon the worst of his neighbors, and his greatest enemies.

But to make a mends for all, our *Author* sayes, *The Tields are returned to the Church*. But seeing the *Earl* possessed all his tithes, by good and lawfull purchases, and undoubted rights from the *Church*, whereof the *Church* neither did, nor could complain, our *Author* should have remembered, that *The Lord loves Judgment, and hates Robbery for burnt offering*.

Yet, in all this, the *Earl* doth not intertain one hard thought of His Majesty, knowing certainly that notwithstanding all was prepared for him by his learned *Judges* and wise *Councillours*, Yet he hath not stept one step, in this affair, but by importunity; even tho all access to represent anything to him, on the *Earl's* behalf, was way-laid. Nor did his Majesty yeeld to pass the late *Signature* disposing of the *Earl's Estate* (albeit the *Earl of Middletoun* was sent express about it) until his *Royal Highness* arrived from *Scotland* at *Newmarket*, and prevailed.

As for the three capital *Sentences*, against the *Earl's Family*, which
our

our *Author* mentions, you have a full account of them in the *Narrative*.

What return shall we then make to our *Author's* Euge, for a happy Kingdom, but, *Unhappy happy Kingdom!* Wherein the fairest words are made the foulest offence, and the smallest offence punished as the greatest Treason, where dreames and visions are exhibited for *Indictments*, and *Judges*, and *Jurors* find them to be *Realities*, where *Right* is turned to *precarious Gift*, and then taken, and retaken, at pleasure: And yet all these things gloried in as the greatest marks of its felicity: And, in a word, whose misery is lamented by all, except a few that enrich themselves with its *spoils*, and triumph in its *Ruines*?

Our *Author* comes, in the next place, to give an account, in what manner the *Earl* gave in his *Explanation*, and took the *Test*: Where *denying* and affirming many things, at random, which are all distinctly set down, and cleared in the *Narrative*, I shall here only briefly remark his own (as he pretends to do other mens) *Mistakes*. And first, albeit the *Earl* was not publicly desired to take the *Test*, yet it is most true, that, in private, his *Royal Highness* did much press him to it: and, after a *meeting of Council* had been designedly appointed for the *Earl's* taking or refusing, his *Highness* did peremptorily oblige him to attend the next *Council-day in course*, and plainly refused to give him leave to withdraw, and take the benefite of the two moneths longer time, allowed by the *Act* of Parliament. 2ly. It is false, That the *Earl* had assured both his *Royal Highness*, and many others that he would not take the *Test*; that he came in abruptly to the *Council*; that he spoke with so slow (or soft) a voice that none say they heard him, that he clapt down on his knees, and took the *Test*. When as. 3ly. It is certain, That what passed betwixt his *Royal Highness*, and the *Earl*, about the *Test*, is faithfully set down in the *Narrative*, and the *Earl* was not more positive with any other on that subject: That it was with difficulty that the *Earl* got his appearance before the *Council* delayed untill the day he presented himself: And that that day he was expected, and also spoke to, and treated with by several *Councillors*, before he entred, about the swearing with an *Explication*: That being entred, and a *stool* set to him, to kneel upon, he first gave in, or (which is more) declared openly, and, word by word, directed toward his *Royal Highness* the *Sense* and *Explanation* wherein he was content to swear: That his *Highness* heard it, and told the *Earl* so much, the next morning: That the *Clerks* heard it, and repeated it to several persons, and one of them in his *Witnessing* against the *Earl* expressly swears that he heard it, and saw it accepted: That some that sate remotest in the *Council* both heard and repeated the *Earl's* words: That, after the *Earl* had pronounced them, the *Oath* was administrat to, and sworn by him; Which was the most proper, natural, and direct *Acceptance* that could be desired: So that, after this business was thus publicly transacted, for our *Author* to say, either that the *Earl* spoke softly, or that he (specially being himself a *Privy Councillour*) should first have given in his *Sense*, and petitioned to know if it was acceptable, is a silly pretence. But 4ly. Our *Author*, not only contrary to truth, but, which is more remarkable, in contradiction even to his *Majesties Advocate*, and the *Records* of the *Court*, proceeds to affirm. 1. That the *Earl* dispersed copies of his *Explanation*, albeit his *Majesties Advocate*, having libelled the same thing, was necessitat to

pass from it, because absolutely false, and destitute of all evidence. And next, *That his Majesties Advocate having allowed the Earl to prove, That the Council heard and approved it, yet he failed in the probation.* Whereas it is manifest from the *Process*, that the Earl, having alledged, for a defence against the crimes of *Leasing-making, Depraving, and Treason*, That the Council had accepted his *Explanation*, in manner above declared, and that therefore it could not be made a ground to infer any of these crimes against him: The *Lords* by their *Judgment Interloquitour* did expressly repel this defence; And all they sustained was a defence proponed to elude the *Perjury*, to witt, That the Earl emitted his *Explanation* at, or before, his taking of the Test: Which emitting, as it plainly differs from the point of *Acceptance*, so was the proving of it justly neglected by the Earl, because the *Emission* notour, and the charge of *Perjury* ridiculous; as you have it more fully in the *Narrative*.

But these things our *Author* willfully mistakes, that he may the more easily abuse strangers. As for what our *Author* here adds, *That the Earl's Explanation made the Oath no Oath, and the Test no Test, and would have evacuated the whole Act, as, he says, he will prove*, shall be noticed, when he comes to his proofs: Only where he says, *The greatest Fanatics in Scotland owned they would take the Test in the Earl's Sense, without prejudice to their Principles*; It is a groundless assertion, and by all of them utterly denied. He says, *The Mist puts a strange abuse upon the world, as if the scruples that he sets down were only the scruples of the conformed Clergy, whereas many Papers, bearing that title, were drawn by the Presbyterians*. But seeing the *Paper* that the *Mist* sets down was certainly emitted by one of the conformed Clergy, and doth fully homologat with the *Rest* above-infer in the *Narrative* (which without doubt are all of their fabrik) the pretended abuse is altogether groundless.

But now our *Author* comes to make good the *Earl's Indictment*, in point of Law: And though here we find nothing new, or repeated with any advantage, and though all be already fully answered, in the *Narrative*, yet, lest he complain of neglect, I shall run over what he alleges, as briefly as I can. And having set down the words of the *Earl's Explanation*, *The first Crime*, says he, *charged upon the Earl, from this Paper, is that, albeit it be statut, That no man interpret the King's Statuts otherways then they bear, and to the intent and effect they were made for: And that the King, and Parliament did appoint the Test to be taken for securing the Protestant Religion, and the King's Prerogative, without any evasion: Yet, notwithstanding thereof, the Earl did take the Oath, in such a sense as did not only evacuate his own taking but learn others how to do the like, and evacuate all Acts of the same nature that can be made.* But seeing that in matter of crimes Statuts are certainly designed for Beacons, Land-marks, and the most clear distinctive Directions that could be invented, as well to hinder men from transgressing as to guard them against the Pains, and therefore are to be understood in the most obvious signification that the words do bear, Is it not an odd stretch for our *Author* to think that a man's taking of an Oath, enjoined by a Statut, in any sense, whether true or false, pertinent or impertinent, if simply offered by him, for expeding of his own Conscience, should be look't upon

upon as an interpreting or misinterpreting of the Statute, which oftentimes happens to be but to clear, when the Oath is confessedly ambiguous?

Thus, as to the sense and meaning of the *Act* in hand, viz. *That all men, therein comprehended, should take the Test, in manner, and under the certification therein contained, the Earl* never had the least hesitation about it. All his difficulty was to clear himself and his own Oath, as to the ambiguities acknowledged even by the *Council* to be in the *Test*, (though not in the *Act*) and this he does, by referring *explicitly* to the *Parliaments* sense, and design, as it stands expressed in the *Act*, without ranversing either the words of the *Test* or meaning of the *Act*, as an other approved *Explication* doth: How is it then possible, that for this he should be thought concern'd in this *Statute*, as a *Misinterpreter*? And is it not, on the other hand, very evident, that both the *Advocate*, and our *Author*, and their Associates, in wresting this Statute (which seems principally to have been made against the *misinterpreting* and *wresting of Laws in Judgment*) to so remote and extraneous a case, are themselves the only *Misinterpreters*, and *Transgressours*?

But waving the connexion let us hear how our *Author* proves the subsumption, viz. *That the Earl did take the Test in such a sense as did evacuate his own, and teach others to do the like, and evacuate all other Acts of that nature: And* (to repeat as little as possible) he says, *That the design of Laws, and Oaths, is to procure a certainty of obedience, and performance, but the Earl's qualified Oath everts this design.* Wonderful! The *Test* is in it self granted to be ambiguous, and reaches not this design. The *Earl*, that he may deal more clearly with God and the Government, declares *explicitly* a plain and certain sense, wherein he is willing to take it; and the *Council*, who might, and ought to have rejected it, if not satisfieing, do accept of it. And yet hereupon he is immediatly by them staged as an *Everter*, *Depraver*, and *Traitour*. And wherefore? Because forsooth the *Earl* promises only to obey the *Act* as far as he can. (A most absurd and ridiculous pretence) And tells us not in what he will obey. Which (albeit no crime though true) is yet a great falshood: For the *Earl* immediatly subjoins a very certain and congruous sense, in which he is willing to take the *Test*, all the obedience here in controversie.

2ly. Because the *Earl* says that no body can explain it but for himself, and reconcile it as it is genuine &c. which, (adds our *Author*) implies that it had no plain genuine sense. But though the *Council* did explain this Oath, and in so far grant that it had no plain genuine sense (for what is already plain without doubt needs no *Explanation*) yet the *Earl* goes not so far: But all he meant was, that, in the midst of so many *Objections* made against the *Test*, he could only clear it for himself: Which also he does most safely and soundly, in referring to its self-consistency, and the *Parliaments* sense, and scope, the best Rules of interpretation.

3ly. Because the *Parliament* designed the *Test* as a security for the Protestant Religion. But, says our *Author*, The *Earl*, by saying He did only take it in as far as it is consistent with it self, and with the Protestant Religion, implies that in some things it is not consistent. But, 1. *Implications*, which may be so easily strained, and oftentimes are found to be as the Fool thinks, are terrible grounds of Crimes. 2ly. If the *Parliament* designed the *Test* as a security for the Protestant Religion, and the *Earl* did

did take it, in so far as it is *consistent with the same Protestant Religion*, what can be more agreeable? And 3ly. It was neither the *Earl's* words, nor intention, that the *Parliament* had framed a *Test* in some things not consistent with it self, and the Protestant Religion, but the true sense of his words was, and is, *That however many did alledge both yet he took it in as far as it was consistent, which he was sure* (as our *Author* says) *was the Parliaments purpose*.

4ly. *Because the design of this Oath being to preclude the Takers from reserving a liberty to rise in arms, upon any pretext whatsoever: The Earl* (says our *Author*) *by his Explication, reserves to himself a power to make any alterations that he shall think for the advantage of Church and State. But, not to stay you here with what you have so fully cleared in the Narrative, Dare any man* (even our *Author* not excepted) *say, That he who reserves a liberty to himself, in his station, and in a lawfull way, to wish and endeavour, any alteration, he thinks, to the advantage of Church and State, not repugnant to the Protestant Religion, and his Loyalty* (which are the *Earl's* words) *eo ipso, reserves to himself a liberty to rise in arms upon any pretext whatsoever? Certainly to assert this, (as our Author here does) is not only to deny common sense, but desperately to affirm, That to rise in arms, upon any pretence whatsoever, is a lawful thing, advantageous to Church and State, and agreeable both to Religion, and Loyalty; The most traiterous and irreligious Position that can be devised; and which, one day or other, our Author may be more straitned to answer then at present he is to maintain the grossest absurdities.*

Now whether by all these syne Remarks our *Author* hes concluded, as he alledges, that the *Earl* hes interpret his *Oath* otherwise then it bears (although this be also a wide, and weak impertinency, as to the inferring of any crime) let the world judge.

But. 2ly. Says our *Author*. *If the Earl's glossing were allowable then there were no need to propose doubts in Parliament, but Oaths might be left to be formed at the Takers pleasure.* But. 1. Is not this consequence far more clearly deducible from the *Councils* emitting their *Explanation*? 2ly. What sense or non-sense could induce our *Author* to dream, that because *Inadvertency* may necessarily occasion *Explications*, therefore men should be still *Inadvertent*? Our *Author* desires to know, from any man of sense, if the *Earl* would have obtained, from the *Parliament*, at the passing of the *Test*, *That every man should be allowed to take it, as far as it was consistent with it self, and the Protestant Religion, and with the Earl's other Qualifications*? And (if I, in this contest, may pretend to this quality) I would answer him roundly. That albeit, I think, hardly any man of sense could make a *proposition*, in thir terms, to that sovereign Court, that had full power to change the *Test*, at their pleasure, Yet I am very confident, that had any man suggested the half of the objections that have since been started against it, they would very readily have endeavoured to obviate all reasonable exceptions of *Inconsistency*; though neither by our *Author's* wise *Expedient*, nor yet by referring them to the *Councils* just and accurate *Explanation*. And for the other *Qualifications* in the *Earl's* words, I am most assured, and have his *Highness* for my *Voucher*, that had the *Parliament* been ask't, *Whether or not the Test did bind up a man, in a lawfull way, and in his station &c?* They would, have

have answered, *Not*, and that therefore, though they might have judged the Reservation not necessary, yet, for the greater ease of conscience, they would never have stuck to allow any honest man, in swearing, to express it or not, at his pleasure.

3ly, Our Author asks, *If a man should by Oath oblige himself simply to make me a Right to Lands, could this sense be consistent with it, I le make it as far as I can? Or would a Right so qualified satisfy the Obligation?* But, if I were to oblige a man simply by his Oath to make me a Right, and he should answer, *Ple do all I can to satisfy you*; and then tell me distinctly what he would swear to do, and what not, (which is the plain parallel of the Earl's case, cleared from our Author's Inversions,) I should think my self bound, whether I accepted his offer or not, to judge him a fair plain-dealing man. But if once I accepted, and should afterward call him a *Cheat*, certainly all men would esteem me the greater *Cheat* of the two.

4ly, 5ly, and 6ly, Sayes Our Author, *Oaths should be so taken as that the Taker may be persued for perjury: That the Covenanters would not have suffered a man to take the Covenant as far as consistent with his Loyalty. And are not the enemies of the King's Supremacy content to swear in so far as is consistent with the Word of God? So that if the Earl's sense were allowed every man should swear upon his own terms, and upon contrary terms.* But, 1. Without question, the Earl turning either *Papist* or *Disloyal* might have been persued for perjury upon his Oath as qualified. 2ly, Albeit the Covenanters might have laughed at a man for adjecting a caution which they thought expressed, yet I am sure, at worst, they would never have judged the offer a crime, much less accused the offerer, after having accepted it. 3ly, It is nothing to the purpose what Declarations the enemies of the *Supremacy* make: But, if these our Author mentions be criminal (as he would have us to believe) I would intreat him to tell us why their makers are not persued: and unless he say, It is because these *Declarations* were not made before, & accepted by the *Council*, I hope he will be so ingenuous as to confess, that it is because, albeit these *Declarations* be judged everfive of the *Oath*, yet they are not accounted *Crimes*, in respect they are only well mean't proposals, which when rejected evanish. And, 4ly, Our Author's Consequence, *If the Earls sense be allowed then every man should swear upon his own terms*, as it doth not at all concern the Earl, so hath it no connexion, except in so far as it reflects on His Majesties Council, the alone Masters of such Allowances.

7ly. Sayes Our Author, *Former Statuts having discharged Conventions, or Convocations, and Bonds, or Leagues, without the Kings consent, The Covenanters protested, that their Covenant was not against these AAs; because they could not be meaned of Meetings and Bonds for preservation of the King, Religion, and Laws, And the 4. Act: Par: 1661. Declares all such glosses false, and disloyal: And therefore the Earls gloss must be so too.* But, 1. The Earls gloss is no such gloss, it doth not at all touch these Conventions or Bonds said to be discharged; therefore it must not be so. 2ly. The Earls Explanation is expressly qualified, in a lawful way, and not repugnant to his Loyalty: which words plainly respect the Act 1661. as well as all other

Acts made for defining our allegiance, and duty: And therefore it cannot possibly fall under its compass as a *Contravention*.

But now, after we have done with our *Author's Critique*, which, he says, makes his *subsumption* clear and undeniable, I freely appeal to all men of ordinary ingenuitie, whether he hath proved so much as the *first Article* of it, viz. *That the Earl took the Test in such a sense as did evacuate his own Oath*, much less the other parts of it (mere extravagant improvements of a leſed phanſy) viz. *That he did thereby teach others to do the like, And evacuate all other acts of that nature*. And yet our Author, as if he had fully made out his *Charge*, goes on to answer, not the *Mist* in the pertinent texture of its whole discourse, but a few such *Objections* as he thought fit lamely to excerpt out of it. And the *first* he takes notice of is, where the *Mist* or *Mr Mist* (as this *Brouillon* calls him) says, *That if the Authority which is to administer the Oath accept the Taker's sense, the Taker is only bound in that sense: But so it is the Council accepted the Earl's sense, and if they had refused it the Earl had not taken the Oath, nor had his refusal been a crime*. Which being indeed an unanswerable *Defence* for the *Earl*, and largely insisted on in the *Narrative*, I shall only shortly consider our *Author's Reply*: whereof the summe and force is, *That the Council, not having the power to pardon Crimes, their connivance at the Earl's misinterpreting the Law cannot exoner him*: Which he illustrates by putting the case, *That a man having many Friends in Council gives in an Explication incontrovertedly treasonable: for example, That he minds not thereby to bind up himself from rising in Arms; yet it would be no defence* (says our Author) *that the Council did not challenge it, for the time*. But (waving the Author's confounding of misinterpreting of a Law with the misſensing of an Oath, His lessening the Councils Acceptance of the *Earl's Explanation* into a bare connivance, and lastly his reproaching their Lordships with a very palpable insinuation of partiality) The question is not, *If the Council have the power of pardoning*, as our Author goes about to pervert the argument, on purpose that he may presuppose a *Crime*, but plainly, *If they have not the Authority to administer the Oath of the Test, by express provision of the Act of Parliament*: Which our Author cannot deny. Now, *If the Council, by the Act of Parliament, have the Authority to administer, and did really accept the Earl's Explanation* (and not only connive at it) which on his part was a mere proposal, and, in effect, by their acceptance became as truly their *Explanation* as if they themselves had emitted it, how is it possible that, in this matter, he should be thought guilty, without overturning all the principles of Reason, Sense, and common Honesty? I grant, *If the Earl, or any man else, had, under the pretext of offering an Explanation, taken occasion openly to misinterpret the Laws, or utter speeches manifestly treasonable, the Councils connivance could not fully assail him*. But, 1. What have we to do with such absurd, and incredible suppositions? And is it not the right of calumnie to compare the *Earl's Explanation*, which both in itself, and in all its circumstances, manifestly appears to be most ingenuously, and dutyfully, by him tendered, for the exoneration of his conscience, and was no less really accepted as such by the Council, with imaginary criminal Wrestings, and treasonable Declamations, which, as proposed, scarce any man, in his right wits, can judge caseable? 2. ly. The *Earl*,
and

and his words, being charged with *Misinterpreting, Slandering, Reproaching,* and *Depraving* his Majesties *Statuts*, and *Proceedings*: If the *Lords of Council*, who represent his Majesty by a commission, unaccountable save to his Majesty alone, accept his words, is it not the same thing as if his Majesty himself had done it? Which certainly is more significant, as to the cutting off of any pretence of *Injury*, then either *Disimulation*, or *Remission*, which yet all Law doth constantly sustain for that end. 3ly, As to the *Treason* objected, though there were some ground for it, as there is none, yet seeing the *Earl's Explanation* was tendered to the *Council*, to be by them authorized, and if by them rejected had indeed evanished as never uttered, It's yet further evident, that their *Acceptance* could not be made a snare to the *Earl*, without the greatest injustice. But 4ly, The *Council* being impowered by the *Parliament* to administer, and having accepted the *Earl's Explanation*, it is the same thing as if the *Parliament* had accepted it, in which case, even our *Author* must acknowledge that all ground of accusation would have been for ever excluded. But, instead of noticing these things, all that our *Author* sayes is. 1. That the Paper containing the *Earl's Explanation* was not given in till the next day after that the *Earl* had sworn the Test. But was it therefore not delivered verbally in *Council* the day before? And was not this *Delivery* enough? And 2ly, That tho the Judges had allowed the *Earl* to prove that he had emitted these words, at the swearing of the Test, yet he failed in the probation. But in what manner, and for what intent, this Allowance was given, and how disingenuously it is here obtruded, I have already cleared.

In the 2d. Place, Our *Author* affirms the *Mists* alledgeance for clearing the *Earl* of the Charge of *Misinterpreting*, viz. That the Law doth only discharge publik *Misinterpreting* to the abusing of others, to be most false. But, although I have already told you, that to extend the Law against *Misinterpreting* the King's Statuts to a man's *Misensing* of an Oath, is a wide stretch, which both *Papists* and *Fanatics*, who vastly disagree from our *Author* as to the sense of the Oath of *Supremacy*, and yet have no difference with him as to the sense of the Acts imposing it, may justly call absurd. Yet, to assist my Friend the *Mist* (who, tho a stranger, hath yet said things ten times more justly than our *Author*, albeit, apparently, a piece of a Scotch aspiring Lawyer.) 1. I would be content to know, If so be our *Author* think every private misinterpretation of Laws to be a transgression of this Act of *Parliament* What shall become, not only of thousands of the King's best subjects, who fall dayly in such mistakes, but also of *Advocates*, and *Lawyers* themselves, who are continually by the *Ears* about such controversies? Nay even of his Majesties *Advocate*, who in his prined *Criminals*, as you may see above in the first *Postscript* to the *Narrative*, calls an Act of *Parliament* an unreasonable, unjust, murdering, and inept Act? And I am very confident, whatever our *Author* shall think fit to alledge, either from the *Direction of the Intention*, or favour of *Circumstances*, for acquitting these *Misinterpreters*, it shall fully quadrate to the *Earl's* case, and with many and clear advantages. 2ly. When our *Author* jumps from the *Misinterpreting* of *Laws* to the *Misensing* of *Oaths*, and thereon tells us, how dangerous and criminal it is to take Oaths in wrested senses, contrair to the design of the *Legislator*: He, first, supposes what is already shewed to be false, viz. That

the Earl's Explanation of the Test is wrested: And next, he quite forgets that no sense of the *Test* can avail, unless accepted by the Council the great *Administrators*. So that, for all his *flanting*, the Government doth still retain its outmost and best Security *viz.* The Fidelity of such as it intrusts, without whose allowance all senses and Explications are utterly insignificant.

In the 3^d. place, Our *Author* offends at the *Mist*, for saying, *That the Legislator is surest of those who give Explanations, & plain dealing is always honest dealing:* Because, sayes our *Author*, *If this prove any thing, it will prove that any man may adject any quality, and so render all Oaths useles,* &c. But. 1. You have just now heard, That the *Takers* adjecting, without the *Administrators* accepting, signifies nothing. 2^{ly}. Our *Author* acknowledges, *That where the sense is previously offered to, and accepted by the Legislator (or such who are by him authorized to administrate, which certainly in Law and sense is the same thing) it secures the Taker.* Which, notwithstanding of our *Author's* reasonless denial, is, in *terminis*. the *Earl's* case. But 3^{ly}. Our *Author* adds, *That the Earl's saying, He is content to take the Test, as far as it is consistent with it self, and the Protestant Religion, condescends to nothing.* Strange! *The Parliament* in the *Test* expressly make the *Confession* the standard of the *Protestant Religion*: The *Council* in their *Explanation* ran verie this, and make the *Protestant Religion* the standard of the *Confession*, and the very fixed point of the *Test*. And yet when the *Earl* swears the *Test*, without the least reflection on the *Confession*, as far as it is consistent with it self and the *Protestant Religion*, All this must be nothing.

As to what our *Author* adds, *That he is desirous to know in what part of Europe such Qualities were ever allowed?* Would he allow me the like liberty, I would ask him, 1. In what part of Europe was ever such a *Test* framed? 2^{ly}. In what part of it was ever such an *Explanation* as the *Earl's*, after acceptance, made a crime? And 3^{ly}. In what part of the whole world was ever such an *Indictment* contrived, and *Judgment* pass? And, in the meantime, he may find in the *Narrative* just such a quality as the *Earl's* allowed in a far plainer *Oath*, by a far severer *Prince*, and in a far more publik manner, to *Archbishop Cranmer*, in *England*. And. 2^{ly}. A much more odd One, in the same matter, by the *Scotch Council*, to the *Scotch Clergy*.

Our *Author* repeats, --- And sayes, *It were most absurd to think that misinterpreting of Laws, and defaming of Parliaments should be suffered, because thrown in into Explications; and that adjected Qualities are worse then Equivocations, and mentall Reservations.* But there being neither *Misinterpreting* nor *Defaming* in the *Earl's* case, and the *Quality* by him adjected being in it self sound and congruous, and by the *Council* accepted (Notwithstanding our *Author's* foolish pretence, *That it was not first offered by way of Petition*) I cannot stand to refute all imperinencies. And, as to what he adds, about the *Council's* *Explanation*, committed in favours of the *Clergy*, that it doth not unsecure the *Legislator*, nor admitt the *Takers* to be *Judges* (as he fallly insinuat that the *Earl's* doth) all these things are already fully examined.

The second Crime, sayes our *Author*, *fixed upon the Earl, from his Explanation, was grounded on the Act Ja: 6. Par: 10. c: 10. Made against defaming of King and Parliament, and depraving their Laws.* But this

this Crime, and all that our *Author* says for enforcing it, being so largely, and clearly answered, in the *Narrative*, I freely grant, That, *Defaming*, and *Depraving* are great Crimes; That it is one of the principal Concerns of Governours to have themselves esteemed by their People; That *Laws* for this effect have been consented to by our Parliaments, to serve (as our *Author* loves to speak) instead of *Armies* (though yet we have the misfortune to have both) That even *Insinuations* and *Inferences* if plainly tending to the *Reproach* and *Slander* of Rulers, may be in so far criminal as to deserve an extraordinary, though not the ordinary pain. And lastly, That in Crimes *Dolus malus* is for the most part presumed from the nature and circumstances of the Deed it self. And shall only adde. 1. That where our *Author* asserts, That the forementioned Act of Parliament was made against Words, and Papers, in general, whereby misliking might be moved betwixt the King and his Subjects; And that it regards the effect only, without respect to the *Author's* design, the same is false, inconsistent, and dangerous: False, because it is a known Maxime of Law, and Reason, That *Maleficia*, *Voluntas*, & *Propositum Delinquentis* distinguunt l. 53 ff. de Furtis. And to think that the Law punishes any thing, without either apparent, or presumed dole, and malice, is to confound Crime and Chance, Guilt and Innocence. 2. Inconsistent, because, albeit our *Author* do here tell us, that the Parliament look't only to the effect, yet afterwards, He not only alledges that the *Earl's* malice may be gathered from the nature and strain of the Paper, but endeavours to clear it, by several circumstances. And lastly, Dangerous, because thereby a man's best security, Innocence, and a Conscience void of offence, is quite taken away, and the man and his words, and writings, exposed to every perverse Inference that *Madness* prompted by *Malice* may suggest.

2ly, That, notwithstanding all the evil inferences, and worse consequences, that our *Author* charges upon the *Earl's* words, yet it is impossible for any man, considering without prejudice the Circumstances wherein they were emitted, not to acknowledge, that as they were plainly intended by the *Earl*, for the Exoneration of his own Conscience, so in place of *Defaming*, & *Depraving*, they evidently contain a very seasonable Vindication of the Parliaments honour, and integrity. If the *Test* had been unanimously concluded in Parliament, and universally received by the People, without hesitation, or exception: And if, in that case, a man had idly and officiously said, That he believed, that the Parliament did not intend to impose contradictory Oaths, and that he, for his part, could take it as far as it is consistent with it self, and the Protestant Religion: I grant that a nice or malicious Hearer might possibly have formalized, and made it a matter of Explication: But when it was notour, and offered to be proven, that contradictions in the *Test* were the common discourse: That almost a third of the orthodox Clergy did, on this account, scruple at it; And severall of them had published their scruples in writing; That the *Earl*, when desirous to absent, was ordered to be called to the Council, either to take the *Test*, or refuse it: And that, the very day he appeared before them, they voted their own Explanation in favours of the Clergy: I appeal to all impartial men, if the *Earl's* Asserting publicly his Confidence, and Willingness, as you have heard, instead of a Reflection, was not, in such a juncture, a most just, and fair Declaration, as well in behalf of the Parliament, as of his own Con-

science. But our *Author* strains, and insists upon Consequences from the *precise and abstract words*, without regard to either *occasion, time, place, manner, or end*, albeit the principal *significators*, in cases of this nature, and in effect the main *hinges* of all morality: A Logick capable to pervert the best words, and subvert all ingenuity, and honesty, amongst men. For put the case that, to satisfy the apprehensions and doubts that were so frequent of *Contradictions* and *Inconsistencies* in the *Test*, His *Highness* himself, or the *President of the Council*, had said to these *Scruples*, in these or the like words, *That he was confident the Parliament had no intention to impose contradictory Oaths*, It is evident, That by our *Author's* reasoning, this very apology, how fairly soever intended, in *charity* to these dissenters, and for the *Parliament's* vindication, might, as well as the *Earl's words*, be urged with all our *Author's* mis-constructions, and made a mortall Crime.

But leaving things so obvious, and already so fully cleared, take a short account of the *Circumstances* wherewith our *Author* doth further charge the *Earl*. And, first. He says, *That the Earl's Father, and Family had owned eminently the Principles against which this Oath was taken.* But our *Author* cannot deny that they owned yet more eminently the *Protestant Religion*, the only subject of this Part of the *Test*, and of the *Earl's Explanation* now questioned: And for the other *Principles* here named, they owned them no otherwise then the *Parliaments* of both Kingdoms did. 2ly. He says, *The Earl himself had taken the Covenant.* And so did ——— And many thousands of his good Subjects beside. 3ly. He tells us, *The Earl had all along opposed the Test in Parliament:* But therefore there was the greater reason that his offer to take it, with an *Explanation*, should have been favourably accepted. 4ly. Our *Author* adds, *The Earl had positively told his Royal Highness, he would not take the Test.* But this is both false and impertinent. 5ly. He says, *Neither the Ministers, nor others in the Earl's country, upon whom he had influence, had taken the Test.* But (beside that this is not true absolutely, and that in effect Few Ministers in Scotland had, at that time, taken the *Test*, in respect there were about two moneths of the time allowed by the *Act of Parliament* then to run) how iniquous is it to make the *Earl* accountable for other mens inclinations? 6ly. *The Concern and Kindness the Fanatiks shew for the Earl* is also objected, but with the same truth and pertinency as all the rest. And yet our *Author* concludes, *All which demonstrate, That he had an aversion from the Test.* Which indeed might very well have been, without this demonstration: But that therefore what he said about it, or (as our *Author* speaks) *did against it* was done *dolo malo* is just as much as to say that he who, in candid and honest dealing, goes about to explain an ambiguous *Oath*, before he take it, speaks maliciously against it.

But our *Author* tells us, *That the Lords of Justiciary had a clear Precedent for what they did against the Earl, in the like Judgment given in the same Court against the Lord Balmerino; Who for a Petition presented to, and accepted, and once read by his late Majesty, was found guilty, upon far remoter inferences, of Misconstruing his Majesties Proceedings.* But this being particularly answered by the *Earl's Lawyers*, in the *Process*, I shall only here add. 1. That *Balmerino's Petition*, containing many positive alledgences reflecting on several passages of the Government,

ment, in order to a redress, wherein his design might very readily fall under suspicion, holds no parallel with the *Earl's Explanation*, on his part a mere *Proposal* made with all due respect to the Parliament, and simply tendered for the clearing of his Oath and Conscience, and not indeed capable of another construction. 2ly. The King never accepted *Balmerino's Petition* by way of *Approbation*, nor was it so much as delivered to him by *Balmerino*. But our Author, by this false phrasing of the King's having seen, and read this *Petition*, would take off the Councils formal, and direct Acceptance of the *Earl's Explanation*. And 3ly. That albeit *Balmerino's Petition*, and the *Earl's Explanation* hold no manner of proportion, yet even *Balmerino's case* was generally judged so hard that his *Jurours* themselves divided upon it, and he was only found guilty by eight of them against seven that absolved him, and immediately after Sentence he was freely pardoned.

As to what our Author adds Of this same *Earl's being formerly found guilty Anno 1662. Of the like Crime, upon the like Ground*: It is very true: He was indeed then found guilty of the like Crime, and upon the like Ground. And not only by the same partie, but by some of the same Persons, who *semel & semper* are, and will be — in eodem genere. But of this you have already had a large and full account.

Our Author comes to review the *Mist's* Justification of the *Earl's words*. To which opposing his former *Permissions* he only repeats, with some new extravagancies, what is already answered. Thus, for instance, where the *Earl*, in duty and civility, says, by way of Preface, That he was desirous to give obedience as far as he could, which clearly refers to the *Act of Parliament*, and the *Councils Requisition*, whereunto he professes his willingness to give all possible satisfaction: Our Author, to shew his good Breeding, and better sense, tells us, That these words were intended by the *Earl* for a quality and part of his Oath, as if he had said that though he was content to swear, yet he was only minded to keep so as far as he could: Whereas it is evident, as the sun-light, that the quality that the *Earl* adjects, and which he would have understood for a part of his Oath begins after these words, And therefore I take the Test; And that this quality is both certain, sound, and most genuine. But having already told you that before the *Earl's* appearance the Countrey was filled with the noise of Contradictions, and Inconsistencies in the Test; So that the *Earl's words* in stead of Reproaching were, in effect, a direct and very seasonable Vindication of the Government, as well as of his own Conscience; And that the Security of the Government as to Oaths is not concerned in the senses that men devise, or propose (as our Author perpetually mistakes) but in such as it pleaseth the Council, the grand Administrators, to accept; I shall not trouble you with further Reflections on this head: Specially seeing that albeit the importunity of the *Earl's* Accuser have occasioned, what in the Narrative, and what in this Preface, a sensing and resensing of his words, almost ad Nauseam. Yet the plain truth, and my opinion is, that the *Earl's words* never had, nor can have but two senses, and these most distinct, and constant, The one genuine, just, and honest, which all indifferent men ever did, and do acknowledge, The other most strained, crooked, and calumnious, which yet his Adversaries will alwise adhere to.

But

But, sayes our *Author*, these words, *I take it in so far as it is consistent with it self, and the Protestant Religion, do so openly import that in some things it is inconsistent that whosoever would persuade him to the contrary must think him Fool or Idiot.* But. 1. Since the *Earl* doth not say what our *Author* would have openly imported, either positively or designedly, it is impossible he could say it *Criminally*. 2. Since his words do manifestly refer to the many *Exceptions* that were abroad against the *Test*; And that it is no less evident that by his *Explanation* he singlly intended to clear his own *Conscience*, and deal candidly with the *Government*: Whosoever would persuade that there is in it any ground of *Offence* or *Crime*, specially after it was accepted by the *Council*, must be really either *Fool* or *Worse*.

Our *Author* indeed tells us, *That the words were spoke by the Earl to inflame the people: That they reflect upon the Prudence and Conduct of the Parliament; and so prove Defaming and Depraving unanswerably. And what can be more Depraving of a Law then to make it Pravam Legem? And what Law can be more prava or pernicious then that which is inconsistent with the Protestant Religion, and which ties to swear things contradictory? And the having sworn and dispersed his Explanations shewes a firm and passionat Design to poyson the People with a belief of all these ill things of the Parliament.*

But seeing the common and certain understanding of *Depraving* is to wrest by a false and malicious construction to a bad end what was designed for a good: That, for certain, there is no *falsehood* so much as alledged by our *Author* to be in the *Earl's* words: And for malice all the circumstances above adduced do undoubtedly purge them of it: That no man in a studied *Apology* can say, *The Parliament did not intend contradictions*, but his words by this calumnious *Logick* may be charged with the same train of absurd Consequences: That the *Councils* *Explication* is, in every respect, more obnoxious to them then the *Earl's*: That our *Author* knows *Dispersing* neither was nor could be proven: And that in effect the *Earl's* *Explanation* was accepted by, and so became the *Councils* more then his (as you have fully heard in the *Narrative*.) This groundless violent *Inveective* is already answered.

But, if I may take a little more liberty then my *Narrator* thought fit to use, Dare our *Author* state the controversie upon this issue, *Whether there be Contradictions and Inconsistencies in the Test or not?* Or if they be (as the *Council* hath implicitly granted, and all men may explicitly see in the *Paraphrase* above set down) will he have it a *Crime* for a man to say, *He believes the Parliament intended no Contradictions, and that he is content to take the Test in so far as it is consistent?* Or would he have us to believe, either that all *Scotch Parliaments*, (or, at least, the *Last*, by reason of an extraordinary assistance) are infallible? Or if they be fallible, as they confess themselves, thinks he the *People* either so *Blockish* as not to see their *Failings*, tho never so palpable, and also important to mens salvation, or so *Brutal* as to break all *Measures*, if once they conceive their *Rulers* to be but *Men*? But though here you may indeed perceive the *Grounds* whereupon all our *Author's* discourses in this Pamphlet do proceed, Yet seeing they are manifestly calculate to some mens unhappy *Designes*, who on purpose inveigh against the *People*, as either ignorant or insolent, that they may be arbitrary: and would have all

Dissemblers

Dissemblers from their designs to be *Suspect*, and all *Suspect* to be *Traitors*, that they may be *uncontrollable*: I hope men are not yet brought to that pass either of *Simplicity* or *Terrour* as to be *cajoll'd* or *cudgell'd* into a compliance with such *pernicious Insinuations*.

The third *Crime* wherewith the *Earl* was charged was *Treason*: A *Crime* now become with us (and so much the more pity that we live under a Prince so quite different) as it was of old said to be under *Tiberius*, *Omnium accusationum complementum*: And which, sayes our *Author*, was inferred against the *Earl* from these words. I doe declare, I mean not to bind up myself, in my station, and in a Lawfull way, to wish, and endeavour any Alteration I think to the advantage of Church and State, not repugnant to the Protestant Religion, and my Loyalty; And this I understand as a part of my Oath. And this, our *Author* tells us, he will make out, in a plain, familiar, unanswerable way: And, for that effect, gives us this demonstration, in *Mode and Figure*. He that reserves to himself the power of reforming Church or State, commits *Treason*. But the *Earl* in his *Explication* reserves to himself a power of reforming. Ergo. And not to amuse you with repeating what is already so fully said, in answer to this *Pretence*, equally ridiculous and pernicious; To this formal Argument take this formall Answer. He that reserves to himself the power of reforming, &c. By asserting or assuming to himself the power of reforming, either proper to the Prince alone, or in a way without his line, or without warrant of Law, or to the hurt of Church, and State, and repugnant to the Protestant Religion, and his Loyalty, commits *Treason*: *Transcat, be it so*. He that reserves to himself the power of reforming, &c. By declaring he minds not to bind up himself, in his Station, and in a lawfull way, to endeavour Alterations, he thinks to the advantage of Church, and State, not repugnant to the Protestant Religion, and his Loyalty, commits *Treason*. Is denied. Nay in effect this is so far from being *Treason* that the thing thus reserved is the indispensable duty of our Allegiance: And for a subject, specially a privy Councillor, not to wish, and endeavour, in his station, and in a lawfull way, such Alterations as he thinks to the advantage of Church and State, and not repugnant to the Protestant Religion, & his Loyalty, were a *Lash Disloyalty*, and plain *Perjury*. But so it is that the *Earl* in his *Explication* reserves to himself a power of reforming, in the former sense, is false, and the very thing denied by his words: In the later, and second, sense, it is indeed true, but, in stead of being a *Crime*, a most clear, and certain duty.

But, our *Author* sayes, That any is as comprehensive as all: which he gravely proves by several instances: and thence inters, That therefore the *Earl* has reserved to himself to endeavour all Alterations. And, sayes he, If that be not *Treason* nothing can be *Treason*. But albeit to endeavour any, or all Alterations simply (as our *Author* sophistically, and calumniously divides the *Earl's* words) may be *Treason*, dare he affirm, That for a man in his station, and in a lawfull way, to endeavour any or all alterations, to the better, and not repugnant to Religion, and Loyalty (which are the *Earl's* words) is *Treason*? Or can he, or any man, deny, that the doing of this very thing may be the necessary duty of every good subject, much more of one of his Majesties sworn Councillors. Our *Author* sayes indeed well, but to no purpose, That it is *Treason* L. 1. §. *Majestatis ff ad L. Juliam Majestatis*, to attempt against the security of the Govern-

ment. But can he, or any man, in his right senses, conceive, that for a man to endeavour any, or all Alterations, as above qualified by the *Earl*, is to attempt against the Government? Certainly he may as soon prove that to assist and advance the Government, faithfully, and strenuously (the true, and obvious import of the *Earl's words*) is to overturn it traiterously.

But our *Author* hath a clear Statute for him viz. P. 1. Sess. 2. Act. 2. Ch. 2. Whereby it is declared that these Positions, That it is lawfull for subjects, upon any pretence, to enter into Leagues, or take up Arms against the King, Or that it is lawfull for subjects, pretending his Authority, to take up Arms, against his Person, or those commisionat by him, Or to suspend him from the exercise of his Royal Government, Or to put Limitations on their due Obedience, and Allegiance, are rebellious and treasonable. From which words, sayes he, I infer, most clearly, That for a subject to declare, he is not tyed up from wishing any Alteration is Treason: For, any Alteration comprehending all Alterations, can any man of sense and ingenuity deny but this is a putting Limitations upon his Obedience (why not due obedience?) and Allegiance? But, admitting any to be comprehensive of all Alterations, can any man of common ingenuity say, That he that declares himself not tyed up from endeavouring, in his station, and in a lawfull way, all Alterations to the advantage of Church and State, not repugnant to Religion and Loyalty, declares himself not tyed up from endeavouring all simply? Which is a quite different thing: Or that he that purposely declares in the former manner, that he may preserve the just latitude of his Allegiance, doth put Limitations upon his due Obedience, and Allegiance, when, in effect, he most expressly ampliats and explains it?

But our *Author* coming to see that the deadly thing in the *Earl's words* is neither the *Any*, nor the *All*, addes. For what is a greater Limitation then to reserve to himself to be Judge how far he is tyed? But, because the *Earl*, in his sincerity, professes that he minded to endeavour, in his Station, and in a Lawfull way, such Alterations as he should truly think, and not barely alledge, to be to the advantage of Church, and State, Doth he therefore make Himself, or his Opinion, the only Rule of his Oath, and performance, and not rather the Law, to which he so plainly refers? Or hath our *Author* either so little Understanding, or so little Honesty as not to acknowledge, that though, *de jure*, all men be obliged to regard Law, and Reason, as the great Directors of duty, Yet, *de facto*, they can only apply them (providing they would do it ingenuously) according to their own conceptions? So that to accuse a man for such an Expression is to put off all professions of Sincerity, and to subvert the very use of thinking among men, as is more fully above held forth.

Our *Author*, in the next place, gives us many reasons, why the *Earl's* Cautions, in my Station, and in a Lawfull way, not repugnant to Religion and Loyalty, cannot save his Reservation; But still seduced by one and the same foolish and wretched Error viz. That because such Cautions do not justify the contrarie Transgressions therefore all Professions so cautioned are a crime. Thus he tells us, first, That the Covenant (as criminal as it was) was so qualified. But who ever thought that these qualified Professions in the Covenant, condescended on by our *Author*, were the Covenanters guilt? Sure I am, it is only for the opposite Practices, and not at all for these Professions, that the

the Act of Parliament condemns them. 2ly. He sayes, *These Cautions never hindered any man to committ Treason.* And what then? Have not the best *Cautions* and highest *Professions* in the world been in like manner violate? Whereas the thing our Author should have said is, *That an Endeavour every way qualified as the Earl professes hath been found treasonable.* But knowing this to be certainly false you see how he here declines to averr it. 3ly. He tells us, *That they that rebelled in the 1666, and 1679. professed great love to his Majesty.* And had they never said, or done more, does our Author think they had been found guilty of Treason? 4ly. He tells us, *That the adjecting of such Cautions is reckoned by Lawyers as Protestatio contraria facto.* And so indeed they may justly be (as they only are) when any *Fact* is committed contrary to them, as for example, when the Earl shall turn Papist. But was it ever heard, since Law was named, or Reason understood amongst men, that a man's declaration, *That he did not mean to bind up himself in his Station, and in a lawfull way, to endeavour Alterations he should think to the advantage of Church and State, not repugnant to Religion and Loyalty,* was judged either *Protestatio illicita, aut cuius facto licito contraria?* And 5ly. Our Author repeats the Statut condemning glosses put upon the Laws by the late *Rebellious Parliaments*, to the prejudice of their Allegiance. But I have already told you, there is no such gloss contained in the Earl's words: And I further appeal to all men (our Author not excepted) whether ever these *Parliaments*, if they had only professed, *That in their Station, and in a lawfull way, they would endeavour any Alteration they thought to the advantage of Church and State, not repugnant to Religion and Loyalty,* would have incurred his late Majesties displeasure, much less the atrocious Character of *Rebellious*, here cast upon them? But, sayes our Author, *Their Explanation declaring that what they did was for the preservation of Religion, which is the very Explanation put by the Earl upon this Oath, was particularly condemned as false and disloyal.* But (not to tell you that by our Author's words a man would think that even to say, *The Test was made for the preservation of Religion, may be found both false, and disloyal; which I heartily wish may never come to pass*) may not this passage alone convince our Author, That it neither was nor could be the *Parliaments* precise professing themselves to be for Religion but only their professing and justifying of what they did to be for Religion which was judged false and disloyal? And that because their *Profession*, or *Protestation*, was thought contrary to their *Deed*; with which the Earl's case, *Qui adeo factorum innocens ut verba ejus arguantur* (as a noble Roman said in the like case) and who is not so much as accused of having done any thing, holds not the least similitude.

And yet sayes our Author, *From all this it clearly follows, That the Earl, by reserving a power to himself to endeavour Alterations, did committ Treason, notwithstanding all his Cautions.* Where, that you may understand the Man, and then see how fairly, and justly, he draws this Conclusion, be pleased to notice, That where the Earl declares, in one speech, *That he meanes not to bind up himself, in his Station, and in a lawfull way, to endeavour Alterations, not repugnant to Religion, and Loyalty,* Our Author (not to speak of his changing) first honestly divides the Earl's words, whereby he, or any man, may, with the same ease, turn Scripture into Blasphemy, telling us, *That the Earl reserves to himself*

a power to make any Alterations: Just as if he had said *this simply*, and no more. Then, straining, and affirming these words to be *Treason*, he rejects all the Earl's *Cautions*, in the same manner as if they had not been manifest parts of his *Declaration*, uttered with one and the same breath, but adjected, *ex post facto*, to palliate some *high Rebellion*. According to the *Candor* and *Justice* of which Procedure it is obvious, That a man's *professing*, he would take up Arms, at his Majesties Command, for the advantage of Church and State, conform to his Allegiance and Loyalty, might be equally judged to be *Traiterous* and *Rebellious*. For, *Rising in Arms* sounding evidently much worse then the *endeavouring of Alterations*, Let our *Author* once divide the words, and affirm, That the first Part of them is *Treason*, and then all that followes shall be held for *Insufficient*, *Cheating*, and *contrary Cautions*, and the man irrecoverably cast as *guilty of Treason*: How justly or unjustly let all men judge.

But our *Author* proceeds to answer what the *Mist* objects: And. 1. Where the *Mist* says: That *Treason* requires a *special Law*, Our *Author* denies it, telling us, *That so soon as Kings were, and before there was Law, it was Treason to rise in Arms against them; That Treason is the fence of the Government, as murder is of private mens lives* (as our *Author* strangely words it) *That Law thought it unnecessary to provide against the greatest Treasons; and that Traitors would easily elude the express words of a Statut*. Which things albeit they be partly true: Yet, 1. I hope, these who in the beginnings of Kingdoms died for *Treason* died by lesse then bills of *Attainder*, viz. by bare *Royall Decrees*, which I cannot think our *Author* imagines were then drawn in *Exemplum*. 2ly. It is to be considered, that because in these beginnings of Kingdoms some Crimes, that are such by the *light of Reason*, were necessarily punished without *Statut*, it will not follow, That therefore Crimes may now be made at *Random*, and punished at *Pleasure*. 3ly. It is without controversy, That whatever, at present, is not *Treason*, *jure gentium*, ought not to be persued, and punished, as such, without a *positive Law*: Specially to infer the *pains of Forfaulture*, which, exceeding the *prescript of common Reason*, do certainly in all cases require an *Express Statut*. 4ly. It is most dangerous, and tends visibly to defeat all the providence and security of Law, to alledge, *That, even in the case of an express Statut, Traitors may elude its words: And that therefore something else* (no doubt the Judge's arbitrary *Arbitriment*) *must be necessary*. And 5ly. It is most certain, and evident, that neither by *Statut*, *Law*, *Reason*, nor *Sense*, the Earl's words are chargeable with the smallest delinquency, much less the heavy Crime of *Treason*.

2ly. Where it is objected, *That the Earl by his Oath as a Privy Councillour is obliged, in that his Station, and in a Lawful way, to propose and advise, and so to wish and endeavour any Alteration he thinks to the advantage of Church and State, not repugnant to Religion and Loyalty: And that therefore his Reservation in these terms was necessary, at least, undenyably good, and lawful*. Our *Author* knowing this to be an *unanswerable Defence* against this imaginary *Treason*, first, *propones* it most lamely, and overly, and then for a *Reply* returns us a *full Concession*; Which that you may the better perceive take the *Argument* for the *Earl* thus.

What the *Earl* is certainly bound to, both by his *Peerage*, and *Oath* as a *Councillour*, the *Reservation* of a freedom to do it cannot be *Trea-*
son

son. But to wish, and endeavour, in his Station, and in a lawful way, any Alteration he thinks to the advantage of Church, and State, nor repugnant to Religion, and Loyalty, is that which the *Earl* is bound to, both by his Peerage, and Oath as a *Councillour*. Therefore the *Reservation* of a freedom to do it cannot be *Treason*.

The Proposition is founded on clear Law, and Reason, it being evidently impossible to conceive that the *Reservation* of a freedom to do what is my *bound duty*, by *Oath*, should fall under the construction of *Treason*.

The Subsumption is proven thus, The *Earl* is bound by his Peerage, and by his Oath as a *Councillour*, to assist His Majesty with his best advice, and concurrence, in all things. Ergo, By his Peerage and Oath he is bound to wish, and endeavour, in his Station, and in a lawful way, any Alteration he shall think to the advantage of Church, and State, not repugnant to Religion, and Loyalty.

The reason of the Connexion is, because, as our *Author* says, *All* comprehends *Any*; and *Things*, no doubt, includes *Alterations*, and *Wishes*, and *Endeavours*, in a lawful way; for *Alterations* to seen advantage not only may but must be imported by the *Advice* and *Assistance* sworn to; when ever His *Majesties* Command or undoubted Interest shall call for them; It being undeniable, that, as *Wishes* and *Endeavours* are included in *Advice* and *Concurrence*, so for a sworn *Member* of His *Majesties* *Privie Council* not to give His *Majesty*, in such an exigent, his best *Wishes* and *Advice*, and his most heartie *Endeavour* and *Concurrence*, would be manifest *Perjury* and *Disloyalty*. Nor does it at all alter the Case though we restrict the *Quality* precisely to His *Majesties* *Pleasure*: For, if that be the only *Lawful* and *Loyal Way* of *Wishing*, *Advising*, *Endeavouring*, and *Concurring*, It is evident that the *Earl's* words do reserve this alone, and no other way beside. So that there could be nothing more justly said by him for asserting that due liberty which his Peerage and Oath do indispensibly require, and consequently, his *Words*, being *plain Duty*, and *Conscience*, could never be made *Treason*.

Now after our *Author* hath shuffled over this *Defence*, and *Exception*, as you may see in his *Vindication*: For an easie answer (as he calls it) he tells us frankly, That no Oath doth hinder a man from doing what is lawful, and so there needed be no *Reservation*, nor *Exception*, on that *Consideration*: And again that the Oath did not exclude any Lawful Endeavours, at the *Desire* or *Command* of the *Prince* (which the *Earl*, as I have told you, is here as well content to admit for the qualification of *Lawfulness* as our *Author*) and so there needed no *Exception* as to these. And thus you see that the *Earl*, for a *Reservation*, even in our *Author's* judgment, neither false nor unlawful, but only judged by him to be needless, is found guilty, & condemned of high *Treason*; which is as full a *Concession*, in my opinion, as could have been desired. *Ay but*, says our *Author*, The former argument still recurs. viz. He that will not bind up himself as to any thing reserves a power as to all things; which must, at least, be interpret of unlawful things; for lawful things need no *Exception*. But (not to notice our *Authors* *Christian* charity, and far more observable justice, that because *Lawful* things need not be reserved (though in all cases dubious it be certainly the more tender part to reserve them) will

therefore have the *Earl's Reservation* to be of *Things unlawful*, and *treasonable*) The *Earl's Reservation* is most expressly of *Things lawfull*; in so far as he only refuses to bind up himself, in his Station, and in a lawfull way, as to things advantageous to Church, and State, not repugnant to Religion, and Loyalty: Which is a full and cumulative Expression of their Lawfulness. And as to what our *Author* subjoyns of the *Earl's putting Limitations on his Allegiance* (in so far as what he sayes is intelligible) it is already answered: It being manifest that the *Earl's* words, in stead of being a *Limitation*, are a designed and ample *Extension*.

In the next place our *Author* comes to tell us, That the *Earl's Qualifications* take off the whole force of his Oath, either as to rising in Arms, or any other unlawfull thing: For. 1. Sayes he, He takes the Oath only in so far as it is consistent with it self, and the Protestant Religion: So that if he think the Protestant Religion shall require rising in Arms he is not tyed. But, 1. I have told you how false it is that the *Earl* resolves the force of his Oath upon his own thinking, which here he doth not so much as mention. 2ly. Is it not strange how our *Author* should judge that the Protestant Religion may not make as certain a Qualification in the *Earl's Explanation*, as it doth in the *Councils*? Where yet, in lieu of the *Confession of Faith*, the standard appointed by the Parliament, it is made the only bar against *Popery*. 3ly. What a ridiculous Conceit it is to think that the *Earl*, by offering to take the *Test*, in as far as it is consistent with it self, and the Protestant Religion, did reserve to himself a liberty to rise in Arms, when by an *Article of the Test*, which can neither be taken off, nor eluded by any part of the *Earl's Explanation*, he was to swear liquidly, and distinctly, not to rise in Arms?

2ly. Sayes our *Author*, The *Earl's Oath* only ties him as far as he can, which may leave him yet bound by the *Covenant*. But I have already cleared how the *Earl* did only profess his readiness to obey the *Act of Parliament* as far as he could, without intending by these Words any restriction of his Oath; and that to wrest them as if designed for that end is an absurd and willfull error. 3ly. Sayes he, The *Earl* takes it only as far as it is consistent with it self. And God and the *Earl* only know how far that is. A noble Testimony to the *Test*! And as plain a declaration that our *Author* neither knows nor cares to know how far it is consistent. But having already told you, that the *Earl* did certainly use this Expression to vindicate the *Test*, and his own Conscience, from other mens *Exceptions*, and *Scruples*; And that no man, in reason, either ought to take it, or can be bound by it otherwise, I shall not here add anything.

And lastly, our *Author* repeats the danger of *Limitations*, telling us, That if after the dreadfull effects we have seen produced by them, and that Parliaments have condemned them as *Treason*, we should still be secure, and unconcerned, all the world might laugh at our ruine. But seeing it is. 1. Most ridiculous to call a manifest *Extension* an undue *Limitation*. 2ly. Most false that ever the *Parliament* condemned any *Limitation* of the nature of the *Earl's Reservation*, or that ever a *Deed* qualified in the *Earl's terms*, was, or can be thought dangerous, far less rebellious. 3ly. Most certain that nothing, in all times, hath so much ruined *Government*, and *Governours*, as the unjust *Jealousies*, and pre-
tended

tended legal, but really violent Proceedings of its Ministers, I shall not trouble our Author with any further Remarks.

In the close of his Discourse, he thinks fit to instigate Judges to Severity, and to guard them against insolent Pity, as he calls it, which truly, after what all men have seen of their frank Procedure against the Earl, appeared to me, at first reading, a very superfluous Caution. But my Surprise was only from the want of our Author's fore-sight, and was soon intirely discus'd: For, just as I am writing, there is come to my hand His Majesties gracious Proclamation, for complecting, no doubt, the felicity of our Author's happy Kingdom, by ordering the Prosecution of all Rebels, and their Resettlers, &c. In the Execution whereof, now after the Government had, for severall years, conniv'd at many hundreds of these Rebels, and out-Laws, and thereby rendered the people secure and careless; It is easy to demonstrate, that more then ten thousand of his Majesties peaceable Subjects may be prosecute, and punished as Traitors, and above forty thousand beside made liable to Fining, and Imprisonment, at the Councils pleasure. A work which, I confess, requires the highest measures of severity that our Author could prompt to, & doth indeed leave the far better part of the Kingdom without all refuge, or relief, save in his Majesties Clemency: But where I also hope they shall seasonably, and comfortably find it, notwithstanding all our Author's many sly and mischievous Insinuations to the contrair.

He wishes the Earl had come in vill, as if forsooth he had proven him to be guilty: And as sally insinuates this to be usual, that he may represent him, not only as Criminal, but a Contemner of his Majesties Mercy.

He likewise tells us, That he doth not admire that this Author, and these of his way see not this Paper to be Treason, since they will not acknowledge it to be Treason to oppose the Succession, and to say, that it can be altered by a Parliament: Which yet, the Scotch Parliament thought to be Treason: Nor in the last age thought they it Treason to rise in arms against the King, and call Parliaments without him: So that, sayes our Author, The fault is only in the depraved Intellectuals of such as have, by a long custome of hating Authority, bred in themselves a hatred of every Person and thing that can maintain it. But not to stay here to discuss all the Calumny, and Envy, wrap'd up in this passage, I shall only desire you to consider. 1. That our Author would have it a transcendent wonder, that the Author of the Mist should say, The Succession can be altered by a Parliament: And yet he cannot but know that that Person lives under an express Act of Parliament declaring it Treason to say the contrary. 2ly. He sayes, The Scotch Parliament thought it to be Treason to oppose the Succession, and to say that it can be altered by Parliament. And yet the same Scotch Parliament judg'd it proper for them to declare and confirm the Succession: And Law and Reason say that, *Constituere & destituere sunt ejusdem facultatis*.

But not to insist upon these things, For a Conclusion I shall only take the liberty to protest for my self (without offering to anticipate the better judgment of others, as our Author visibly doth) That were I as clear for the Succession as his Royal Highness, As dissatisfied with the old Statut, and late Proceedings of the English Parliaments about it, as our Author, As zealous for the Honour, and Infallibility of the last Scotch Parliament as his

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as his *Majesties Advocate*, As enraged against former *Practices* as the greatest Torry in Britain, And yet more tender and respective of *Authority* then my own heart: I could not have imagined, that either *Misinterpreting*, *Defaming*, *Depraving*, or *Treason*, should have been found in the *Earl's* words: And am very apprehensive, that the *Judgment* so given against him may prove a greater bar to the *Succession*, and *Reflection* on *Scotch Parliaments*, and *Judges*, then all that our *Author* hath laboured to *squeeze* out of them.

C O P P Y
O F

His Majesties Letter, ordering the passing of his two former *Signatures* for the *Earl's* Offices and Jurisdictions.

AT *Edinburgh*, the fifteenth day of *January*, 1669 *Years*, His *Majesties Letter* under-written, direct to the *Lords Commissioners* of his *Treasury*, and *Exchequer*, was presented, and read, and ordained to be recorded, whereof the *Tenor* followeth. Sic superscribitur CHARLES. R. Right trusty, and right well beloved *Cousins* and *Councillors*, and right trusty, and well beloved *Councillors*, we greet you well. Wee did, upon the fyfteenth day of *October* 1667, sign a *Signature*, in favours of the *Earl of Argyre*, and another, shortly after, for the *Lands of Knoydart*: The *Signatures*, we are informed, are not past And in *August* last, our *Secretary* acquainted us with a *Letter*, which he had received from our *Advocate*, bearing date the thirteenth day of *August* 1668 *Years*, together with an *Information*, containing thirteen *Reasons*, against some heritable *Offices*, comprehended in the said *Signature*: We are also acquainted with the *Earl of Argyre's* *Answers*. All which we have taken into our consideration: And, although we are very well satisfied with our *Advocate*, in his doing of his duty, in representing to us what he conceives to be fit for our service in this particular; as also with his *Fidelity*, and *Diligence* in other things relating to his *Place*; Yet, upon serious Consideration of the whole matter, It is our *Gracious Pleasure*, That the said *Signatures*, with these *Offices*, be past our *Exchequer*; and that, in the terms expressed in our *Letter*, signed by us. soon after the signature, anything in our *Instructions* to the contrary notwithstanding. For all which this shall be your warrant. And so we bid you farewell. Given at our Court at *Whitehal*, the seventh day of *January*, 1669, and of our *Reign* the 20 *Year*. By His *Majesties* Command. Sic subscribitur *Lawderdale*. Extractum de Libris *Actorum Scacarii* per me. Sic subscribitur

THO. MURRAY Clericus Reg.

F I N I S.

